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ABSTRACT

This report provides the proceedings of an expert seminar, held during the preparatory meeting of the Conference on Security and Co-operation in Europe (CSCE) summit, which was designed to contribute to the new media orientation of the CSCE. The proceedings notes that the main media issue in the 1990s is no longer to legitimize freedom over censorship but to guarantee that the mass media will actually serve the citizen's right to communicate as prescribed by Article 19 of the Universal Declaration of Human Rights. Papers in the proceedings are: (1) "The Human Right to Communicate in a Civil Society" (Cees Hamelink); (2) "From Governmental Regulation to Market Regulation: Press Law and the Meaning of Article 10 of the European Human Rights Convention" (Dirk Vorhoof); (3) "Old Problems in a New Environment: Broadcasting Legislation in Eastern Europe and the Republics of the Former Soviet Union" (Wolfgang Kleinwachter); (4) "New Freedoms--Old Problems? The Role of Journalists in Times of Change" (Colin Sparks); (5) "Subject, Object or Equal Participant? In Search of a Realistic Goal of Communication Democratization in Poland" (Karol Jakubowicz); (6) "Russia: Is Law on the Press Still Pressed by 'Sandwich Law'?" (Yassen Zassoursky); (7) "From Perestroika and Glasnost to Independent Media? A Russian Perspective" (Yuri Baturin and Yegor Kouznetsov); (8) "The Role of Audience in the Present-Day Media Situation: The Case of Estonia" (Halliki Harro); (9) "One Step Forward and Two Steps Back? The Romanian Broadcasting Law" (Cristian Constantinescu); (10) "The Council of Europe and the CSCE Process in the Area of Information Policy" (Lawrence Early); (11) "The Development of Media Cooperation between European Countries" (George Wedell); and (12) "Framework, Structures and Mechanisms" (Bernard Blin). Excerpts from the Helsinki CSCE document, other key CSCE documents, documentation of the seminar, and a summary report of the Round Table on Media Law in Europe are attached. (RS)

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Kaarle Nordenstreng &
Wolfgang Kleinwächter (Eds.)

CSCE AND INFORMATION

Proceedings of a seminar of experts Tampere, April 24-27, 1992

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This report provides the proceedings of an expert seminar, held during the preparatory meeting of the CSCE summit. It was organized by the University of Tampere in co-operation with the International Association for Mass Communication Research (IAMCR) and the Finnish Association for Mass Communication Research on April 24-27, 1992.

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Preface

The Conference on Security and Co-operation in Europe (CSCE) held its latest summit in Helsinki in July 1992 and decided among other things that its newly established Office on Democratic Institutions and Human Rights in Warsaw will convene a seminar on "free media" in the second half of 1993 (see Annex I, page 151). Accordingly, information issues - brought to the CSCE agenda as part of the original "Basket III" of the 1975 "Helsinki Accords" - were confirmed to remain on the CSCE also under the post-Cold-War conditions. (For key CSCE documents preceding the summit and relating to the media issues, see Annex II.)

It is symptomatic that the media question is now placed in the context of human rights and democratic institutions, with a significant input from non-governmental civic organizations. The main media issue in the 1990s is no longer to legitimize freedom over censorship - now agreed at least in principle by all parties - but to guarantee that the mass media will actually serve the citizens' right to communicate as is prescribed by Article 19 of the Universal Declaration of Human Rights, instead of being used as instruments of vested interests (not least commercial interests).

This report provides the proceedings of an expert seminar, held during the preparatory meeting of the CSCE summit, which in its own modest way contributed to the new media orientation of the CSCE. Its organizers, in particular the International Association for Mass Communication Research (IAMCR/AIERI, a "category A" NGO at UNESCO), are gratified that media professionals and scholars have been able to participate in a historical process in the interest of citizens at large. They will continue to do so by mobilizing the media expert community to cooperate in preparing and conducting the forthcoming seminar on free media.

The present report reproduces the papers presented at the seminar in Tampere (except that by Karol Jakubowicz who was prevented from attending and sent his paper later). A summary of discussions is provided in Annex III. For reference, Annex IV reproduces the report of a Round Table on media laws in Europe convened in Tampere three years earlier - on the eve of the CSCE Information Forum in London - and attended by largely the same experts.

The organizers gratefully acknowledge financial assistance from the University of Tampere and the Finnish Ministry of Education and Culture as well as hospitality by the City of Tampere and the Finnish Broadcasting Company (YLE).

Kaarle Nordenstreng ***Wolfgang Kleinwächter***

The Human Right to Communicate in a Civil Society

Cees Hamelink

1. Why should we apply the idea of international human rights to the normative assessment of the political arrangements governing the mass media and their cross-border operations?

Contemporary discourse on the state of the world frequently refers to a metaphor which is attractive, lucid, simple, and wrong. It is the projection of the world as a *global village*. Particularly striking about the use of this equation is that its authors must know very little about village life. One of its characteristics is that most villagers know what is going on and that most of them know each other. The opposite is true of our "shrinking" world: there is more going on than ever before, yet most of us know very little about it and the majority of the world's citizens have little knowledge or understanding of each other. The imagery of a shrinking world is yet another misguided representation. In a real sense, our world is expanding. There is more world than ever before in history: more people, more nations.

Precisely, the fact that we have more world than we can personally know, makes us in unprecedented ways dependent upon a caste of professional intermediaries. They form the real priesthood of our times: telling us what is and what is not, filtering for us the truth from the lies, and providing us with an authoritative exegesis of current events. As they stand between us and our world environment, the quality of their mediation becomes essential to the quality of our lives. Let us briefly look at how well they operate.

In 1983 there was a clear prospect of a very serious famine in Africa. However, people were not yet dying like flies. Among the comments by TV station NBC on footage that showed a food distribution in Eritrea was "It is not yet a Biafra". As long as hunger does not have sufficient news (entertainment) value, it can be ignored and under-reported. Once, however, people began to die on camera, the famine became a media-event.

Then it was over-reported and hordes of anonymous Africans, without dignity, became media objects. Then also the sensationalizing began and the

international media stated that some 125 million Africans were threatened by starvation. The situation was bad enough, but never over some 10 million people were actually near to starvation. Throughout the 1980s and into the 1990s Africa was and remained un-reported, under-reported, or over-reported.

In October 1988 three grey whales got stuck under the ice in Alaska. 150 reporters, and 26 camera crews came to report the 'whale-drama' to over 1 billion viewers in the world. No medium report said anything about the socio-economic conditions of the Eskimos in the same location.

In 1989 the events at Tien An Men square took place. The New York Times reported 2.600 students killed in a massacre. On 21 June 1989 the Times admitted that about 400 may have lost their lives and that the original figure was based on rumours.

In December 1989 East-European agencies reported the sensational discovery of a 4.000 people mass grave in Timisoara, Romania. The images were shocking and looked very real. In reality, as it turned out, in Timisoara never more than 150 people were killed and the grave was an old poor people's graveyard hastily dug up.

The 1991 Gulf War reporting provided prime examples of distorted mediation. Many TV stations, for example, did broadcast the videotapes manufactured for propaganda purposes in the 10 million dollar campaign conducted for the Bush administration by the Washington-based Public Relations firm Hill and Knowlton.

Many important stories about the war were not reported. Videotape footage that did show that civilian damage was much heavier than the US administration cared to admit, was spiked by most TV networks. Most media selected not to report about the Allied Desert Storm casualties. Satellite photos taken on September 11, 1990 demonstrated no evidence of the massive Iraqi army threat to Saudi Arabia that president Bush referred to the same day when he tried to generate public support for the war. The news media were censored and allowed themselves to be censored.

These examples could easily be multiplied and complemented by analyses of highly wanting coverage provided by the international newsmedia of such events as the invasions of Grenada and Panama, the bombing of Tripoli or the trial of Panama's president Noriega.

In all of this professional mediation there is a great deal of misleading (partly by design, partly by default) that affects the sovereign capacity of people to deal in dignity and liberty with their social reality.

In summary:

The daily lives of the world's citizens are deeply affected by the quality and scope of cross-border communications and by the political arrangements governing these communications. In unprecedented ways more and more people have become dependent upon the reliability and security of communication hardware and software.

2. The idea of human rights.

The idea of human rights provides a substantial standard for the protection of citizen sovereignty as it offers a normative framework against which wrongs inflicted upon human beings can be judged. This judgment is not restricted to the national level. The idea of human rights offers a comprehensive code of conduct in which all human beings matter, in which norms and rules are defined for the dignity, integrity, liberty, and equality of **all** human beings.

It provides for the shift from objects to subjects: all the world's citizens are entitled to rights and duties under international law. The idea of human rights proclaims that human dignity is more important than national security.

There is obviously an enormous discrepancy between the idea and its performance. In real world politics the Westphalian arrangement of sovereign nation-states is still dominant and stands squarely in the way of universal respect for human rights. A basic threat to the protection of human rights continues to be posed by states unwilling to yield power over their citizens. The reality of today's world systems is still largely a case of criminals policing themselves.

As the post-1945 international human rights regime evolved, it remained a weak and largely non-enforceable arrangement. It should be realized that this was a conscious political choice. Most nation-states continue to have little interest in interference with their human rights record.

The critical reflection on current world political performance does not only expose the discrepancy between idea and practice, and suggest inadequacies in the political practice, it also points to insufficiencies in the idea.

I take it as self-evident that the continuing lack of sufficient, accessible, and affordable means of redress, in themselves undermine human rights. As the old Roman law adagium says *"Ubi ius, ibi remedium"*, which also means in the reverse that without remedial measures, there is no law.

I would like to submit that - in order to be able to provide a robust normative framework for assessment - we need to re-think the idea of human rights beyond the critique of implementation mechanisms.

This obviously needs a much longer philosophical reflection than can be offered in the brief opening address of a seminar. Yet, allow me to share some thoughts with you and apply these to the two important European regulatory instruments on transfrontier TV.

3. The inadequacy of current human rights theories.

The conventional theories imply limitations to the understanding of human rights that erode the effective protection of the very basic claims they enunciate. These theories are characterized by:

a. their limited interpretation of the concept 'freedom';
b. their limited understanding of the concept 'equality';
c. their lack of attention to the notion of 'redress' in those cases where structural conditions hamper claims to freedom and equality;
d. their failure to integrate the standards of 'individual liberty' and 'social cooperation';
e. their limited scope for 'horizontal effect';
f. their lack of institutional consideration.

ad a. Conventionally, the concept of freedom is constructed in a negative sense only. As such it means freedom **from** constraints and interferences. Complete human freedom, however, also encompasses the freedom to emancipation and self-development.

The '**freedom to**' (**positive** freedom) points to a process of empowerment through which people liberate themselves from all those forces that hinder them in taking decisions concerning their own lives. This interpretation of freedom implies a process of emancipation that should be guided by the basic norm of the sovereignty of individuals and peoples. This concrete activity of human emancipation requires certain social conditions.

The norm freedom in conventional human rights theory is Lockean in nature, i.e. it is intrinsically related to the protection of private property. The primary purpose of the norm is to protect property. It follows the basic sense of property law in the Roman tradition: *"dominium est ius utendi et abutendi re sua quaterus iuris ratio patitur."* In this legal thinking freedom equates primarily the autonomy to use your property provided no legal rule is violated. Freedom of the press, for example, is the right to use the press within the limits of the law. There is no social responsibility beyond the limits of the law. If the unhindered expansion of property causes inequalities, then these are necessarily legitimate.

Freedom as the right to own and to protect the expansion of property does not provide protection for those who do not own property, for example a printing press or a TV station.

In the liberal-bourgeois legal tradition the main concern is with the notion of individual 'negative' freedom as the essence of law. A serious problem with this concept of freedom is its easy alliance with forms of blatant social inequality. Freedom can easily be limited to the economically independent

citizen (Kant), it can exclude women (the French civil rights declaration of 1789) and it can be combined with slavery (U.S. Bill of Rights, 1791).

ad b. Conventionally, the concept of equality is restricted to the political sphere. It should however be extended to all those (socio-economic and cultural) spheres that are essential to human emancipation and self-development. Beyond the concern to realize equal voting rights in democratic societies, for example, the need to create equal participation in cultural life, should receive similar emphasis. In an extended interpretation of 'equality', the concept means equal entitlement to the social conditions that are essential to emancipation and self development.

Conventional human rights theories are biased towards a European tradition in which it is assumed that all human beings are equally capable in asserting their rights and in which the legal system is formally based upon the assumption of the initiative of free citizens to defend their rights. These liberal foundations of human rights law tend to neglect the reality of the widely differential capacity to such initiative. In reality, the powerful are always better in asserting their rights through litigation than the less powerful.

Whenever the concept of equality is used this pertains largely to the Lockean interpretation of "one rule for rich and poor" or to the Kantian interpretation of non-discrimination (the law should treat all citizens as equals).

In these interpretations the law recognizes a formal concept of equality that is related to the perception of inequality as a form of social differentiation which can and should be corrected. Law is anti-discriminatory in the sense of repairing social disadvantage by the equal treatment of unequals.

This however does not change the structurally unequal relations of power. The equal treatment can even reinforce the inequality. Providing equal liberties to unequal partners functions in the interest of the most powerful.

ad c. The realization of such norms as freedom and equality require certain social conditions and it could be argued that no human being should have privileged access over others to such conditions. The recognition of human beings as free and equal implies the acceptance that all human beings have valid claims to the social conditions of freedom and equality.

These claims are undermined if there are no accessible and affordable means of redress. Rights and remedies are intrinsically related and where human rights theory does not provide adequate scope for redress, it erodes the effective protection of the rights it proclaims.

ad d. Conventional human rights thinking cannot integrate the norm of individual uniqueness with the norm of social cooperation and fails to demonstrate that individual liberty and social equality are compatible.

Re-thinking human rights theory would argue that individual liberty and social equality have to be integrated, since without social equality, liberty is undermined, as it becomes the liberty of a restricted 'caste'.

ad e. Conventional human rights thinking mainly focuses on the vertical state-citizen relation. This ignores the possibility that concentration of power in the hands of individuals can be as threatening as state power. Whenever citizens pursue different economic interests, individual human rights will be under serious threat. Citizens also need to be protected against each other.

Here the idea of human rights entails an ambivalent position on the state-civil society interaction. The realization of civil rights requires limitations on the power of the state, yet the realization of social and economic rights need the authority of the state.

ad f. The idea of human rights has to extend to the social institutions (the institutional arrangements) that would facilitate the realization of fundamental standards.

Human rights cannot be realized without involving citizens in the decision-making processes about the spheres in which freedom and equality are to be achieved. This moves the democratic process beyond the political sphere and extends the requirement of participatory institutional arrangements to other social domains. It claims that also culture and technology should be subject to democratic control.

This is particularly important in the light of the fact that current democratization processes (the "new world order" processes) tend to delegate important areas of social life to private rather than to public control and accountability.

Increasingly large volumes of social activity are withdrawn from public accountability, from democratic control, and from the participation of citizens in decision-making.

4. Freedom of expression.

The critical analysis of conventional human rights theories can be illustrated with the case of "freedom of expression".

The basic assumption of conventional human rights thinking regarding the freedom of information is that freedom of expression as such is given and that there should only be protection against the danger of interference by the state.

This assumption glosses over the fact that in the reality of unequal societies this freedom does not exist for everyone. In almost every society individuals and peoples are silenced.

Therefore, the right to freedom of expression would have to rather focus upon the provision of access to the public expression of opinions than on the prevention of restricting opinions.

The liberal right to freedom of expression does not imply that everyone acquires equal access to the means of expression.

Moreover, it needs to be realised that in the liberal tradition the right to freedom of expression is formulated as a 'liberty' and not as a 'right' in the strict legal sense. It represents a privilege of expression without interference, but does not constitute a 'claim-right', i.e. an entitlement with a corresponding legal obligation. In the strict legal sense a right implies a situation where a person is entitled by legal process to compel another person to act as prescribed.

In cases where human rights are formulated as 'liberties' (as with the freedom of expression) it is not possible to impose a corresponding duty on another natural or legal person that can be forced by the subject of a right to implement this right.

In fact many crucial human rights are rather liberties, providing certain privileges to its holder that another person has no rights to interfere with.

An important element too is that the freedom of information in the liberal tradition is not directly linked with the principle of equality. As a result it offers insufficient support to the 'information-poor' who claim that their freedom of information can only be realised in case adequate means of expression are available. The liberal interpretation does not favour the use of preferential measures ('positive discrimination') in situations of social inequality.

The liberal interpretation offers insufficient protection against the control of information and media by a limited group of citizens. Since freedom is mainly protected from state interference, the restrictions that fellow-citizens can pose upon access to information are left outside the scope of the right. In other words, no horizontal effect is foreseen.

Re-thinking human rights would entail the following components:

a. The inequality of social relations of power is taken as a starting point. Basic is the recognition of the reality that some individuals/peoples have more access to information and media than others and that some groups are capable of silencing others very effectively.
b. Human rights should have horizontal effect. They should not only apply to state-citizen, but also to citizen-citizen relationships. In the case of information provision they should offer protection against information oligopolies organized by fellow citizens.
c. Human rights in the field of information should be formulated as legal claim-rights. In situations of social inequality it is inadequate to award a right to expression

without the concurrent obligation on powerful social actors not to silence weaker social actors.

d. The idea of human rights does imply the principle of material equality and includes in this the option of applying positive discrimination. This is justified by the observation that the realisation of basic human rights in situations of social inequality does demand the unequal treatment of unequals.

5. The European instruments.

How do the major European policy instruments in the media field, stand up in the light of re-thinking human rights? These instruments are the European Convention on Transfrontier Television (Council of Europe, 1989) and the Directive on Transfrontier Television (European Communities, 1989).

The normative assessment here is intended as a discussion starter only and obviously needs further elaboration and detail.

A normative assessment needs to look at both substantial and procedural dimensions. The key questions to ask are really: *Are the norms themselves sufficiently consistently and forcefully formulated?* and *Are there institutional arrangements available for realization and redress?*

On substantial dimensions: The underlying pattern of thought is conventional and does not meet the requirements of an extended human rights approach. The freedom of expression standard, for example, is not strengthened beyond its limited interpretation in the European Human Rights convention (Art. 10). Following current case law Article 10 does not provide for the individual a right of access to information, nor does it imply an obligation for governments to impart information. There are no provision for a horizontal-effect: e.g. there are no rules against media concentration.

Both instruments fail to address the protection of individual privacy, the issue of the reliability of information (except for the case of advertising, hardly the most important source of information about the world), accountability and liability. Except for the right of reply for which no procedures were established and for which the EC directive also provides grounds for refusal of the right, no redress is offered to audiences.

There is no provision for the protection of a public cultural sphere.

On procedural dimensions: Television involves economic public policy, cultural public policy, and technology public policy. In these policy processes there is remarkable little democratic participation.

One could take as an illustration the case of High Definition Television (HDTV) which is the classic demonstration of technocracy and economic oligarchy. Here is a technological development that is controlled by a small elite while it affects millions of consumers who were never asked to join the decision making process. A European treaty on TV if it takes human rights

seriously would provide for public participation in the decision making on use and development of TV technology.

However, the instruments have no provisions for citizen participation in decision-making processes. There are no provision for institutional arrangements protective of citizen interests. It does not seem likely that the standing committee that the COE convention establishes will have citizen representation. There are very cautious rules for the invitation for non-state actors to partake of the committee's deliberations.

6. Civil Society.

Without conceptually extending the idea of human rights, its concrete application will undermine the very norms it enunciates. Core concepts of human rights theories such as 'freedom' and 'equality' cannot be achieved without certain institutional arrangements. This requires that civil democracy be extended to the decision-making processes in the social realms of the economy, technology, and culture.

This implies the establishment of institutional arrangements that secure the accommodation of a plurality of claims, i.e. a democratization beyond the political sphere into the realms of public economic, technology, and cultural policies.

A robust conception of human rights would require the extension of citizens participation in decision-making on the aims and forms of economic development, technological development (technology is too critical to be left to the technocrats) and cultural development (culture is too important to be left to the managers of Disneyparks).

This can only be achieved through an active self-organizing civil society that organizes the protection of its interests against the hegemonic, expansionist forces of both states and transnational corporate interests.

As De Tocqueville argued in his Democracy in America the democratic revolution can only be consolidated by the "independent eye of society", this is the plurality of selforganized and constant vigilant civil associations.

In terms of institutional arrangements for the mass media a robust human rights regime requires besides state-controlled and market-controlled media, media institutions that represent civil society.

In today's reality most of the world's professional and industrial production and distribution of culture and information is controlled by those social forces that hamper self-governance and people's empowerment. The very powers that obstruct civil sovereignty control most of the world's communication flows. By and large the production and distribution of information and culture is controlled by states or markets.

As a result most current debates on media policy focus on the question of government control versus market control They seem to completely ignores citizens and consumers: the forces that constitute civil society.

A new paradigm for communication that facilitates empowerment cannot be state-centric or market-centric. It has to be inspired by civil democracy. Communication channels need to be designed that genuinely represent civil society.

It is saddening and maddening to see how a civil-society based arrangement as Dutch broadcasting is now rapidly eroded and commercialized through the converging forces of European deregulation, the understanding of broadcasting as economic activity, the sociological shift in supporting civil constituencies, the lack of concern on the part of government and political parties, and the carelessness of the public squandering its precious cultural resources.

The struggle can only be undertaken by myriads of individuals and groups. The counterforces are formidable - representing state and market interests. The most formidable obstacle may be the citizens themselves in their remarkably low level of concern about the quality of their informational-cultural ecology.

The recent Gulf war has provided ample and dramatic proof of this. If any manufacturer had brought on the market a product as defective and unreliable as the CNN newscasts there would have been a vast consumer uproar. It is disconcerting that the global sales of televised lies, appear to cause little public concern! It has often been said that in wartime truth is the first casualty. It may well be, however, that people's desire to be told the truth is a close second. By and large, media audiences during the Gulf war preferred to remain ignorant.

This can be supported by the finding that nearly eight out of ten Americans supported the Pentagon restrictions on the press and six said that the military should exert more control. Eight out of ten said the press did an excellent job and over 60% thought the press coverage was accurate.

The problem is complex: deficiencies on the supply-side and deficiencies on the demand-side mutually strengthen each other. The professional mechanisms of information mediation stand in the way of a comprehensive, and unbiased provision of information. Equally, the disinterest of the world's citizens to be fully informed, obstructs the information flows.

In their preference for third-rate video and TV products and popular magazines and newspapers, millions of people state they have the right to be ignorant.

Our expanding and complex world has a double problem: the means of information provision are highly inadequate and the market is largely uncritical.

This is remarkable as during the 1980s across the world people have become very active in new social movements (the Transnational Moral Lobbyists), as they discovered the basic failure of states and markets to fulfil

basic aspirations of security, clean environment, liberty, and social equality. People mobilized themselves to defend civil society against state and market.

So far the arena of communication politics has been ignored by people's movements. There is increasing concern with our physical environment, but who cares about the future of our informational and cultural ecology?

From Governmental Regulation to Market Regulation? Press Law and the Meaning of Article 10 of the European Human Rights Convention

Dirk Voorhoof

> "Communications media should aim to empower a plurality of citizens who are governed neither by undemocratic states nor by undemocratic market forces. The media should be for the public use and enjoyment of all citizens and not for the private gain or profit of political rulers or business " (Keane, The Media and Democracy, xi-xii).

Historical intro

I think most of us, and I presume all of us, do agree on this statement and on the ideal of the effective freedom of the press. In this paper I'd like to make some considerations on the theory of the freedom of the press. Secondly I will give a short overview of different kinds of existing regulation on the field of the print media in Western-Europe. And finally I will pay some attention to the relation between art. 10 E.C.H.R. (freedom of expression and information) and the press regulation. Additionally I will mention in short the action of the Council of Europe on the field of press regulation, especially with regard to press concentration.

1. Short historical introduction on the development of the freedom of the press.

1.1. Since the invention of the printing press (in Europe in the 15th century, in China in the 8th century) the press was dominated by the powerful elite. The state (and/or the church) controlled the exchange of opinions and information

in the religious, cultural, scientific and political domain. This was the case in the absolutist states in Europe, as well as in the Ottoman Empire and the Arabic world, in Japan and China. The press was considered exclusively a tool for enhancing the power and legitimacy of the ruling bureaucracies or the absolutist elite. The main instruments the state used to develop the control over the press, were censorship and prior restraint, monopolistic licenses for publishers, taxes on newspapers (stamp tax), strong repression of published critique against the state or against the political elites, seizure and confiscation of oppositional newspapers, imprisonment, fines, exile and even death penalties for printers, publishers and authors/journalists who were held responsible for illegal publications or publications that could harm the state or were adversary to the government.

1.2. At the end of the 17th and in the 18th century in the context of the new political theories which led to the "Enlightenment" -philosophy, the main arguments have been developed why the freedom of the press was a necessary and fundamental instrument in the struggle against despotic government and against oppression of the people (De Spinoza, J. Milton, J. Locke). It is only after long and hard social and political struggle however that at the end of the 18th century "de iure" the freedom of the press was recognized as a, or must I say as **the**, fundamental right in a democratic society. This was the case in the First Amendment of the U.S.-Constitution, in the Declaration des Droits de l'Homme et du Citoyen in France, in the Royal Decree on the Freedom of the Press in Sweden in 1766 (the Tryckfrihetsförordningen) and in the constitutions of the parliamentary democracies in Europe as e.g. in Holland and Belgium in the first half of the 19th century.

1.3. The main feature of the constitutional and liberal right of freedom of the press is undouptedly the protection it offers against interference of public authorities, especially against government-interference. So in this historical context, the freedom of the press is formulated as a defensive right. The paradigm in other words of a negative freedom, against any state action in the field of the press. Historically, as a matter of fact, the state and the government were seen as the main threat for the freedom of the press. Like Thomas Jefferson stated in 1787 : "Were it left to me to decide whether we should have a Government without Newspapers, or Newspapers without a Government, I should not hesitate a moment to prefer the latter". So to say in the light of the classic right of the freedom of the press, the best press law was no press law. The best government interference was no government interference. The best state intervention with regard to the press was no intervention by the state at all.

1.4. The distrust against government interference goes hand in hand with a great belief in the free marketplace of ideas and information, based on

economic liberalism. The classic ideal of free press originated in the days of small-scale enterprise and widespread belief in decentralized market competition as a vital antidote to centralised political despotism. Private property in the means of communication was directly linked to freedom of communication. The market was viewed as a viable instrument and a sufficient caution for the free circulation of public opinions. Hence, in western democracies the development of the freedom of the press is characterized by a retreat of the government and by a retreat of restrictive or negative state intervention. The free marketplace of ideas was the ultimate goal. A free press, guaranteed as an individual right and based on economic liberalism, has thus been seen as an essential component of a free and rational society.

2. The myth of the classical approach of the freedom of the press in its idealistic and economic components.

2.1. It should be noticed that there has always been a wide gap between the theory or the utopia of the liberty of the press and the reality of a limited circulation, the unequalities of access to and ownership over the print media, the lack of representativeness of the press because of its highly "bourgeois"-character. The idealistic principle of the free market acting with equal competitors, has to be seen as a myth. Market competition gave birth to great press barons and later to extended press-enterprises, which led to centralization and monopolisation. Instead of a growing concurrence that leads to more quality and more choice on the information-market, there rather has been an erosion of competition : only a few market leaders survived and are dominating the newspaper market. Cross-media ownership over newspapers, books, magazines, broadcasting and telecommunications, was the next step in a further evolution of the erosion of competition and the strengthening of the domination of multimediaconcerns over the information-market. New initiatives can hardly enter into the market because of the huge infrastructural investments needed.

So it is assumed that the free market in reality is not offering the assumed choice and diversity. The more and more the economic logic of the press-enterprise is dominant whereby the two services the press has to deliver, namely supplying information to readers on the one hand and supplying consumers to advertisers on the other hand, are getting the more and more interlinked while the second service gets even dominant over the first one. The ultimate economic logic is maximizing the audiences and minimizing the costs. Advertising became the most important income-basis for the newspapers. Advertising encouraged a general shift away from diversity of coverage towards the packaging of ready made information and light entertainment, emphasizing human interest, more sensational attention towards crime, violence, scandals and stars. Advertising commercialised the structure and

content of the media. Advertising stimulated the growth of what we can call "pseudo-newspapers".

This is in rough lines the general analysis as concerns the economic reality of the liberal theory of the free press. That is one reason why the historical and classic paradigm of the freedom of the press no longer seems to be a valid one. As "historically, the proponents of 'liberty of the press' directed their criticism mainly against state regulation of market-based communications media. Today, by contrast, friends of the 'liberty of the press' must recognize that communications markets restrict freedom of information (..) by shifting the prevailing definition of information from a public good to that of a privately appropriable commodity" (Keane, 89).

It must be concluded that there is a structural contradiction between the freedom of the press and the unlimited freedom of the market, and that the market liberal ideology of freedom of individual choice in the marketplace of opinions is in fact a justification of and an instrument for the privileging of corporate speech and giving more choice to investors than to citizens. Barron typified this perspective of the freedom of the press as follows : "the free marketplace of ideas is essentially a romantic and anachronistic notion in an era of communication monopolies".

2.2. Secondly, it has to be noticed that the theoretic ambitions of the liberal concept of the free press, in practice did not coincide with an abolition of regulation or with a total ban of restrictive rules on media-content. Even in the 19th century, in the period where the implementation of this classic-liberal paradigm of the free press is to situated, state regulation with regard to the press existed on several domains. In some countries, as in Belgium for instance in the period 1831-1848, the existing stamp tax on newspapers was not seen as a breach of the constitutional guarantee of the freedom of the press. In Belgium, shortly after the declaration in the constitution of the freedom of the press, specific legislation was proclaimed against the oppositional republican newspapers and against the 'Orangistic' press that supported the return to the former Holland government. In spite of the constitutional freedom of the press, a lot of restrictions were formulated in new legislation in order to protect the new parliamentary monarchy, to protect the king and the royal family, to protect the new parliamentary institutions and the administration, or in order to protect the friendly relations with other countries, to protect the financial interests of the state, to protect the dominant morals of society. The security of the state and its institutions and power elites has often taken precedence over the value of the freedom of the press. So ultimately, even under the paradigm of the freedom of the press, government restrictions stayed an obstacle for the effectiveness of the realisation of the theoretical ideal of the freedom of the press. Also under the classic-liberal concept of the freedom of the press, this freedom was never an absolute one. It was so the say a "guarded" freedom

within the framework traced by the political authorities (parliament, government and local authorities).

3. Recent developments in the protection of the freedom of the press and in press regulation.

3.1. Besides the inherent contradiction within the liberal paradigm of the free press, and the myth of the free press in the 19th century, some important evolutions in society and in law are to be mentioned as additional reasons why the classic paradigm of the free press is no longer a valid one in modern democracies.

There is of course the fundamentally changed role of the state itself. The 19th century "nightporter"-state developed itself towards the **"welfare state"** in the last decades of the 20th century, whereby it is tolerated or even expected that the state is active on several domains in society. This growth of the state action goes hand in hand with an increasing growth of regulation. The sector of the media is not an exception to this: there is not only a growing quantity of broadcasting-regulation, also in the field of the print media there has been an ever increasing state intervention. From this perspective, the state is no longer seen as the exclusive or dominant threat to the freedom of the press. The state, it is argued, has to take care in order to shape the structural conditions, to help to realise the freedom of the press in practice where the market fails to realise pluralism, access and diversity.

Besides the classic, liberal political rights and freedoms, in the second half of the 20th century the importance of the recognition of the so-called "social and cultural" rights is to be mentioned in this context. Rights and freedoms of the citizens are no longer exclusively dependant on the abstention of state intervention, but do at the contrary, or at least at the same time, suppose some kind of "positive state action" in order to help to realize these social and cultural rights.

3.2. There also has been an important evolution from the grounding of the press freedom as a natural exclusive right of the citizen (classic-individualistic right) towards the grounding of the press freedom as a **functional-democratic right** (social-collective right). The press, it is assumed, is contributing to public debate, helps to develop public opinion and to create the modern public sphere. The press is fulfilling an important function in a democratic society while it publicly exposes the abuse of political power and operates as a public watch-dog against undemocratic behaviour of the government, of the legislator and of the administration of justice. Moreover, the press is supposed to have a social responsibility and the media as a whole should be pluralist and in reality reflect the diversity of society. So, in as far that there are thresholds in the market and the press in reality is no longer able to fulfil its tasks, the state has the

obligation to intervene and to help to create the conditions needed for a workable competition on the market and for the realisation of the community task of the press. As a matter of fact, the last decades there has been an increasing state intervention, not to restrict the freedom of the press, but to carry out measures to achieve positive social aims or to limit the effects of market pressure and trends: systems of press subsidy has been worked out, anti-monopoly legislation, regulation of advertising, legislation to protect the editorial an journalistic freedom, establishment of press councils or "press-ombudsman" etc. (cfr. infra). As well the social responsibility theory as the so called normative-institutional theory which both put more emphasis on the interest of society, were giving support to this kind of positive state action in order to help the press to develop its and regulation dealing with the mass media includes an important public policy component, based on the assumption of protection of the freedom of the press in order to guarantee pluralism and diversity.

3.3. Another evolution that has to be mentioned is that not only the freedom of the source to express himself, but also **the right of the citizen to be informed**, was added at the notion of press freedom. Not only the individual has the right to express his opinion by way of the press, the public also has the right to be informed. Certain information is to be made available for every interested citizen. In the Sunday Times case e.g. the European Court of Human Rights expressed the viewpoint that the media not only have the task to impart information and ideas on areas of public interest, but that "the public also has a right to receive them". In the same judgment the Court observed that art. 10 not only guarantees the freedom to inform the public but also the right of the public to be properly informed (Sunday Times, 1979. See also Sunday Times, 1991 and Observer/Guardian, 1991). Not only the source, the citizen as a communicator is the subject of the principle of the freedom of expression and information. Also the citizen as a receiver of information, the individual as part of the public opinion, is subject of this freedom. In this context, the "democratic-participant" theory of the press is to mentioned. The central point of this theory lies with the needs, interests and aspirations of the active receiver in a political society. In the case law of the European Court of Human Rights this right of the public to receive information is explicitly recognized (cfr. infra).

3.4. These developments have given additional and decisive arguments for a different approach and a changed relation between the state and the press. In modern western democracies state-regulation in the field of the print media is no longer synonym for censorship. Government measures and press regulation are even seen as necessary in a democratic society in order to stimulate or to realise the freedom of speech or of the press or the freedom of expression and information. In some states in Europe, the duty of the state to intervene is even

based on the constitution. The freedom of speech and of the press is not simply a right protecting individuals from State intervention. The freedom of the press has also a social aspect: all democratic States have an obligation to secure an adequate protection of this freedom for everyone. The conglomeration of power in a few media consortia is considered to be a possible threat to the freedom of the press and offers a sufficient legitimate basis for press regulation in order to protect the freedom of the press an to safeguard media pluralism and informational and cultural diversity.

So there is a constant tension between the states duty to refrain from intervention and its duty to carry out a policy conductive to freedom of the press, which is what leads to its regulatory activities. The state however should leave intact the media's functional task in a democracy in the maintenance of free communication.

So both the State and the market are regulating the press. Both are expected to guarantee a sufficient level of freedom of the press in a democratic society.

4. A schematic overview of state-regulation and state-action in the field of the printed press.

It has to be noticed that the press regulation in actual western democracies is very diversified. 8 different types of press regulation can be indicated.

4.1. Fundamental laws protecting the freedom of the press.

- Constitutions, laws, international treaties guaranteeing the freedom of the press and at the same time are qualifying it by opening the possibility of restrictions.

4.2. Legislation restricting the content of the press.

This restrictive rules are in a large extend existing in all countries. In the one or the other way, they can be situated under the restrictions enumerated in art. 10 par. 2 E.C.H.R. So it concerns restrictions aiming at the following interests:

1: the interests of national security, territorial integrity, public safety (interests of the state);
2: the maintaining of the authority and impartiality of the judiciary (interests of the jurisdiction);
3: the prevention of the disclosure of information received in confidence (interests of the administration of public authorities and the administration of justice; interests of secrecy and privacy);
4: the prevention of disorder or crime (general interests of society);
5: the protection of health or morals (interests of the population in general);

6: the protection of the reputation or rights of others (private interests, rights of individuals, sanctions against libel, slander, defamation, racism, privacy protection against the media).

To be acceptable within the law order of the E.C.H.R. these restrictions must be necessary in a democratic society (cfr. infra).

4.3. Regulation on the journalistic profession.

- Laws regulating the journalistic profession, giving certain facilities to professional journalists, legal protection of the title of professional journalist, specific rights for newsgathering, the newsmen's privilegies...

4.4. Regulation on advertising.

- General restrictions on advertising or restrictions on certain products or services (tobacco, alcohol, medicine, weapons, toys...).
- Specific restrictions on advertising in the press.
- Specific restrictions on advertising in radio and television in order to protect the income from press advertising.
- Compensations for the press for presumed loss of income due to advertising on TV.

4.5. Merger legislation (organising the press enterprises).

- Prohibitions on cartel agreements or prescriptions on the possible content of cartel agreements. Prohibition on the abuse of a dominant economic position (on the relevant market).
- Restrictions and control over cross media ownership or concentration in the press sector (limitations on horizontal, vertical, diagonal multimedia concentration, national and international). The regulation can be on the level of the ownership, or on the technical, advertising, distribution or editorial level.
- Transparency regulation.
- A typical Belgian (Flemish) formula has to be mentioned here. With regard to the private television broadcaster of the Flemish Community, the commercial television VTM, the Flemish Decree of January 1987 obliges that the shares in this private limited company must at least for 51 % in the hands of the publishers of newspapers and magazines in the Flemish community. This obligatory majority-participation of the press in commercial TV is seen as a fundamental guarantee for the Flemish press because this formula is expected to compensate the newspapers and magazines for their possible loss of advertising revenues and is estimated to reflect the plurality of the press in the commercial TV. In stead of a

prohibition of concentrated media cross ownership, one has to do here with a legal compulsory form of media cross ownership in order to protect the pluralism in the national private audio-visual media. It seems however that this construction is in conflict with the E.C.-Treaty because of the protectionism and discrimination it reflects towards publishers and investors from other E.C.- member states.

4.6. State aid

- Direct subsidies, general or selective, long term or occasional, for starting up newspapers or to support existing newspapers, investment subsidies, subsidies for paper, subsidies for the distribution of newspapers, training of journalists, financial support to investigative journalism...
- Indirect support measures, such as
  * reduced or zero VAT rate for newspapers;
  * fiscal incentives for investments in the press;
  * preferential distribution and telecommunication rates (reduction on post, telephone and telegraph; reduction for train, airplane, transport and distribution).
- Advertising by public authorities in the printed press.

4.7. Other types of regulation in the field of the press.

- Prohibition to publish or distribute printed matter without indicating the name and residence of the author or the printer.
- Legal obligatory deposit of newspapers, magazines and books.
- Copyright law and rules in copyright law in order to stimulate the free flow of information and to restrict the author's rights in favour of actual newsreporting.
- Legislation on the right of reply.
- Freedom of information acts (access to official documents or other types of information).

4.8. Self-regulation.

Besides legislation and government regulation, also other kinds of regulation may prove to be interesting formulae for guaranteeing editorial autonomy, hence pluralism in the press.

- Individual contractual agreements.
- Collective contractual agreements (Collective labour agreements between journalists and publishers).
- Editorial statutes (separation of the editorial responsibility from the commercial management of the publication).

- Construction of a "foundation" as a watch-dog over the editorial identity of the newspaper that especially allows a newspaper or group of newspapers its journalistic autonomy and identity after the absorption of the newspaper(s) into an editorial group which has a different ideological point of view.
- Journalistic codes of ethics.
- Codes of advertising.
- Self-regulation within the professional organisations or journalist unions.

5. Art. 10 E.C.H.R. and press regulation.

Art. 10 of the E.C.H.R. provides the following :

> "1. Everyone has the right to freedom of expression. This right shall include to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights or others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

It will be indicated hereafter how art. 10 E.C.H.R. reflects the double character of the right of freedom of expression and information, as to the position and role of the public authorities with regard to the regulation of the press (abstention and positive action). In this the importance of art. 10 E.C.H.R. is to be underlined, whereas art. 10 offers the framework and fundamental basis for media law and press regulation in Europe, both within the Council of Europe and within the European Community.

5.1. It has to be noted first of all that, just as other "freedom rights", the freedom of expression and information as embodied in art. 10 E.C.H.R. has the character of an **"abstention right"**. Basically, there is only a prohibition for the state to interfere. Or formulated in another way: there is an obligation of the public authorities not to interfere in the freedom of expression and the freedom of information, which means a duty of abstention in the field of the

freedom of communication. The possibilities of interferences are narrowly restricted by par. 2 of art. 10. The European case-law is guaranteeing a high level of protection to the freedom of the press.

5.1.1. The Court's case-law consistently emphasized that freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man. The freedom of expression and information as guaranteed by art. 10 E.C.H.R. is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no "democratic society". Freedom of expression, as enshrined in Article 10, is subject of a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established (Thorgeirson, 1992).

5.1.2. This means art. 10 has to be interpreted from a stand-point of a **high level of protection** of freedom of expression, even if this information is harmful to the state or some groups, enterprises, politicians etc. (Sunday Times, 1979; Barthold, 1985; Lingens, 1986; Weber, 1990; Oberschlick, 1991; Castells, 1992; Thorgeirson, 1992). However, the criticism or offensive publication should remain within certain limits and it is not always clear where to draw the line (Barfod, 1989; Markt Intern, 1989).

In the Lingens judgment e.g. the Court recognized on the one hand that the use of some expressions and value judgements in the litigious article apparently could harm a politician's reputation, whereas, on the other hand, these impugned expressions had to be seen against the background of a post-

election political controversy in which harsh criticism is in no way unusual but rather part of the hard-fought tussles of politics. So the Court was of the opinion that the interference in the journalist's exercise of the freedom of communication was a breach of art. 10 (Lingens, 1986). In the Weber case, the Oberschlick case, the Ezelin case the Castells case and the Thorgeirson case, critical and offensive speech was also protected by art. 10 E.C.H.R. (Weber, 1990; Oberschlick, 1991; Ezelin, 1991; Castells, 1992; Thorgeirson, 1992).

5.1.3. Information and ideas are given a high level of protection when they are made public in a **context of a political debate**, i.e. the protection of public speech.

In the Sunday Times case the Court drew the attention to the fact that the thalidomide disaster, as the subject matter of the litigious press article, was a matter of "undisputed public concern" and, by bringing to light certain facts, the article might have served as a brake on speculative and unenlightened discussion. Because of these reasons the Court was of the opinion that the

public interest in the freedom of expression on this kind of information was so important that the restraint imposed on the Sunday Times' article was to be seen as an infringement to art. 10 E.C.H.R. (Sunday Times, 1979).

In the Barthold judgment the Court noticed that the litigious article was informing the public about a situation occurring in Hamburg at the time when the enactment of new legislation on a particular topic was under consideration. The sanction imposed on a member of a liberal profession was estimated not to be consonant with the freedom of expression as otherwise it risked to discourage members of the liberal professions from contributing to public debate on topics affecting the life of the community (Barthold, 1985).

In the Lingens and in the Oberschlick case it is recognized that for the public the freedom of the press is one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally the Court stated that the **freedom of political debate** is at the very core of the concept of a democratic society (Lingens, 1986; Oberschlick, 1991).

In the Weber case the Court drew attention to the fact that as a journalist Weber, was well-known for his ecological activism and that his interventions where echoed by the press at large. The secret judicial information the journalist made public on a press conference was linked to this ecological debate and the public was interested in this information. That was the reason why the sanction imposed on the journalist was seen as a breach of art. 10 E.C.H.R. (Weber, 1990).

In the 1991 "Spycatcher" cases the Court underlined the importance of free speech on matters of public interest (Sunday Times 1991, Observer/Guardian, 1991). In the Thorgeirson case the Court estimated that the litigious articles reporting cases of police brutality, were dealing with a matter of serious public concern. Having regard to their purpose and impact which the articles designed to have, the Court was of the opinion that de particularly strong and offensive terms could not be regarded as excessive (Thorgeirson, 1992). In the Castells case too, the Court drew the attention to the fact that the article published by the applicant concerned "faits d'un grand intérêt pour l'opinion publique" (Castells, 1992).

5.1.4. In this, **the press** plays an important role according to the case-law of the European Court. In the Sunday Times case the Court was of the opinion that the general principles of freedom of information are of particular importance as far as the press is concerned : the media have the task of imparting information and ideas in all areas of public interest (Sunday Times, 1979). The penalty imposed on a journalist because of the criticism he published and his critical attack on an important politician, reveals the danger of a kind of censure, which would be likely to discourage the journalist from making criticism of that kind in the future. The Court was of the opinion that "in the context of political debate such a sentence would be likely to deter the journalist from

contributing to public discussion of issues affecting the life of the community. By the same token, a sanction such as this is liable to hamper the press in performing its task as purveyor of information and public watch-dog" (Lingens, 1986, see also Barthold, 1985). In the Barfod case the Court stated that when striking a balance between the interests as embodied in the restrictions of art. 10 par. 2 against the value of the open discussion of topics of public concern, one cannot overlook the great importance of not discouraging members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern by means of the mass media (Barfod, 1989; Ezelin, 1991; see also Voorhoof, 1989a). The importance of the freedom of information for the press is also recognized in the Court's judgments of 1991 by emphasizing the vital role of the press as a "public watch-dog" on matters of public interest (Sunday Times, 1991; Observer/Guardian, 1991; Oberschlick, 1991). In the recent Castells case the Court stressed "le rôle éminent de la presse dans un Etat de droit. Si elle ne doit pas franchir certaines bornes fixeés en vue, notamment, de la défense de l'ordre et de la protection de la réputation d'autrui, il lui incombe néanmoins de communiquer des informations et des idées sur les questions politiques ainsi que sur les autres thémes d'intérêt général. La liberté de la presse fournit aux citoyens l'un des meilleurs moyens de connaître et juger les idées et attitudes de leurs dirigeants. Elle donne en particulier aux hommes politiques l'occasion de refléter et commenter les soucis de l'opinion publique. Elle permet à chacun de participer au libre jeu du débat politique qui se trouve au coeur même de la notion de société démocratique" (Castells, 1992). In the Thorgeirson case the Court took notice of the fact that the applicant expressed his views by having them published in a newspaper and that therefore regard must be had "to the pre-eminent role of the press in a State governed by the rule of law" (Thorgeirson, 1992). In the Markt Intern case, the Court also recognized the importance of the specialized press in some sectors. So, the commercial strategy of an enterprise may give rise to criticism on the part of the consumers and the specialized press : in order to carry out its task, the specialized press must be able to disclose facts which could be of interest to its readers and thereby contribute to the openness of business activities (Markt Intern, 1989).

5.1.5. So the importance for the **public to be informed** is seen as a crucial factor. In the Sunday Times case the Court expressed the viewpoint that the media not only have the task to impart information and ideas on areas of public interest, but that "the public also has a right to receive them". In the same judgment the Court observed that art. 10 not only guarantees the freedom to inform the public but also the right of the public to be properly informed (Sunday Times, 1979; see also Sunday Times, 1991 and Observer/Guardian, 1991).

5.2. To some degree art. 10 E.C.H.R. can also imply **a duty for the public authorities to take measures** in order to ensure or to stimulate the freedom of communication.

5.2.1. Such an approach is related to the **general evolution** of the so-called "socializing" of the European Conventions' rights and freedoms. Examples of this double character of the rights and freedoms embodied in the E.C.H.R. can be found in the Court's case-law. In reference to art. 8 E.C.H.R. (right of privacy) e.g. the Court stated that "by proclaiming in par. 1 the right to respect to family life, Article 8 means firstly that the State cannot interfere with the exercise of that right otherwise than in accordance with the strict conditions set out in par. 2 (..). Nevertheless, it does not merely compel States to abstain from such interference : in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective 'respect' for family life" (Marckx, 1979).

With regard to art. 11 E.C.H.R. (freedom of peaceful assembly) the Court was even more explicit. Although the Court didn't develop a general theory of the positive obligations which may flow form the Convention, in the case of "Plattform 'Ärzte für das Leben'" the Court manifestly recognized the aspect of state duty or positive action in the field of a Conventions' right. The Court stated also follows : "Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11" (Plattform Ärzte Für Das Leben, 1988).

5.2.2. This means that the modern state within the Conventions sphere has a kind of "promotional obligation" or an "ecological liability" in the human rights field so that the public authorities' role obliges them to go beyond mere abstention and to take positive action. It should be noted however that while it is the duty of the Contracting States to take reasonable and appropriate measures to protect and ensure the rights and freedoms of the Convention, the national authorities have a wide discretion in the choice of means to be used. Furthermore, the duty of the state has the character of an obligation as to measures to be taken and not as to results to be achieved (Plattform Ärzte für das Leben, 1988).

5.2.3. This element of positive obligation is also to be connected to **art. 10 E.C.H.R.** In the case of Geïllustreerde Pers vs. the Netherlands, the European Commission considered that the protection of the commercial interests of particular newspapers or groups of newspapers is not as such contemplated by the terms of art. 10 of the Convention but that "these matters might perhaps raise an issue under this provision where a State fails in its duty to protect against excessive press-concentrations, but this obviously is not the position in the present case" (Geillus-Treerde Pers, 1976). So deciding, the Commission at

least recognized in abstracto the obligation of the national authorities to take measures against excessive media monopolies which might endanger the freedom of communication in practice. In a decision of 1986 the European Commission considered as necessary the Swiss media policy and the media regulation aiming at a sufficient level of cultural and linguistic pluralism within the federation and its regions (Verein Alternatives Lokalradio, 1986).

5.2.4. Support for the "positive action" approach with regard to the freedom of expression and information can as well be found in the final report of the Sevilla-colloquium of 1985 on the European Convention on human rights, in which it is stated:

> "4. Given the socio-economic conditions of our society, which do not favour equality and in which organised groups hold important portions of power, it is the State's responsibility to ensure the effectiveness of the implementation of freedom of expression and information in practice.
> 5. The notion "necessary in a democratic society", as such, is not only fundamental in the supervision of the duty of the public authorities not to damage or interfere in the exercise of the right to freedom of expression and information, but also implies the obligation of State Parties to ensure plurality and to correct inequalities".

In the Declaration of 1982 is it recognised that "states have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and an plurality of information sources, thereby allowing a plurality of ideas and opinions" (Committee of Ministers, 1982).

5.2.5. It is clear that such an approach reflects an evolution whereby the freedom of communication in relation to mass media regulation is changing from a liberal, individual and classic freedom right towards a **social and cultural right**. The state action to create the conditions for the ensurance and the stimulation of the freedom of communication should stay however within the framework of art. 10 par. 2. This means that any regulation on mass media, be it for the protection or stimulation of the freedom of communication itself, should not put restrictions on that freedom that go further than what can be tolerated according to the second paragraph of art. 10 E.C.H.R. This means that positive regulation, in so far as it implies a certain restriction on the freedom of communication, should always be legitimated as "necessary in a democratic society". Furthermore, art. 17 E.C.H.R. forbids the public authorities, to invoke the Convention for the justification of an act aimed at the destruction or further restriction of fundamental rights. According to the case law of the European

Court of Human Rights, the member states enjoy a certain margin of appreciation in assessing whether and to what extent an inference in the freedom of the press is necessary, but this margin goes hand in hand with a European supervision covering both the legislation and the decisions applying it. When carrying out that supervision, the Court must ascertain whether the measures taken at national level are justifiable in principle and proportionate (Groppera Radio, 1990).

5.2.6. So a **press policy** is congruent to art. 10 E.C.H.R., albeit that the measures in order to support the media plurality should not interfere with the content of the media or make government support dependent on the editorial or journalistic policy of the newspaper. Press policy in other words should not be directly aimed at the content of the press. As the European Commission pointed out in the Markt Intern case: "A democratic society must leave it to the publishers to determine what matters are of sufficient interest to merit publication" (Markt Intern, 1987).

It must be concluded that in the scope of art. 10 E.C.H.R. a State may choose to limit the "freedom of enterprise" of media undertakings so as to safeguard pluralism. But a state may do so only to the extent necessary in a pluralistic and democratic society to ensure "the rights of others" to receive and impart information.

6. The Council of Europe and press regulation.

In 1974 already the Committee of Ministers adopted Resolution (74) 43 on press concentrations and recommended the member states to examine the introduction of public aid to the press, the institution of a press fund enabling to subsidize certain categories of newspapers with the view to developing their ability to compete on the market. It was recommended also that governments should encourage efforts to rationalise the methods of production and distribution of newspapers with a view to diminishing publishing costs.

In 1975 the Parliamentary Assembly of the Council of Europe adopted Recommendation 747 (1975) on press concentrations, followed in 1978 by Recommendation 834 (1978) on threats to the freedom of the press and television. In this the Parliamentary Assembly called for the enactment of restrictive national legislation on press monopolies and concentrations and recognized that measures of public economic aid to the press may be necessary to assure the financial viability of all newspapers. Any form of selective aid, it was recommended, should be attributed only by an independent body.

In the eighties more attention has been going to the audio-visual policy which led to the European Convention on Transfrontier Television. The evolutions in the branch of audio-visual media and telecommunications made that the phenomenon of concentration was no longer limited within the sector

of the printing press, but was also developing into the broader scope of multimedia ownership or cross-media concentration.

In February 1989, in a "Motion for a Resolution on the dangers caused by media concentrations for the exercise of freedom of expression and information and for cultural diversity in Council of Europe member States", the Parliamentary Assembly of the Council of Europe expressed its great concern by "recent take-overs in the written press and by the rapid developments of multimedia ownership at multinational level, inspired by purely economic and financial considerations, but which are leading to a smaller number of independent publications and to an impoverishment of the cultural diversity in the media" (Parl. Ass., 27 February 1989, Doc. 6021).

Consequently the Steering Committee on the Mass Media (CDMM) and the Parliamentary Assembly of the Council of Europe decided to co-operate so as to have a better understanding of the developments taking place in the member states in the field of media concentration. A Working Party on media concentrations was set up (CDMM-GT-CM) and in 1990 a report on multimedia concentration regulation in Europe was presented by IDATE (Montpellier) and IVIR (Institute for Information Law, Amsterdam). This report is actually being completed and published. Meanwhile, a synthesis report on media concentrations in Europe was presented at the 3rd European Ministerial Conference on Mass Media Policy, Cyprus October 1991.

7. The European Community and press regulation.

7.1. Press regulation and especially legislation on media concentration may involve problems under the scope of EEC law, more specifically at the level of EEC competition law (art. 85 and 86 of the Rome Treaty : cartels and abuse of dominant position) and from the scope of the free circulation of goods and services.

It has to be noticed however that the aim of anti-concentration legislation is to secure effective competition.

According to the EC Regulation on the control of concentrations between undertakings of 21 December 1989, the European Commission is competent in the field of concentrations above a certain level. If the Commission decides however that a given concentration is compatible with EEC law, member states may still prohibit the concentration on the basis of legitimate interests, such as media plurality. Concentrations, including media concentrations, not falling under the Concentration Regulation may at any time be restricted by national measures for the protection of pluralism, but this must not unduly affect the free movement of goods, services, persons and/or capital in the media sector. National measures must neither discriminate against EEC nationals vis-à-vis a State's own nationals.

Some small European countries have adopted or intend to adopt media concentration policies because they fear takeovers by foreign enterprises or multinational mediagroups which may harm the local, regional or national freedom of expression and may be a threat for the existing level of pluralism and for their cultural identity.

7.2. With regard to state aid in his different forms, there is in principle no problem from the scope of EEC law, as long as these measures do in itself not infringe some of the principles set forth in the treaty. So the European Community leaves the national governments room for stimulating measures in the domain of the press (such as in the domain of art and culture) (see also art. 92-94 EEC Treaty).

7.3. The Commission also has announced that it is studying the possibilities of proposing a Directive to harmonise certain aspects of national measures so as to protect media pluralism, because national legislation might not be sufficient to guarantee pluralism in all cases.

In art. 128 of the new Treaty on European Union it is stipulated that the Community shall contribute to the flowering of the cultures of the Member States and that the Community action, if necessary, shall be aimed at supporting and supplementing their action inter alia in the area of artistic and literary creation, including the audio-visual sector. At the same time the Community shall take cultural aspects into account in its action under other provisions of the treaty in the domain of culture and non-commercial cultural exchanges.

So arguments of cultural policy and the protection of pluralism in the media can legitimate national press legislation.

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Old Problems in a New Environment: Broadcasting Legislation in Eastern Europe and the Republics of the Former Soviet Union

Wolfgang Kleinwächter

The fundamental changes which have taken place in the last few years in Eastern and Central Europe as well as in the republics of the former Soviet Union have wide ranging consequences for the media system, and in particular for the broadcasting system in these countries. In the old order broadcasting was more or less centralized, state owned and under strict control of the communist party. Now, the system becomes decentralized, independent from the state and commercialized.

Right to Freedom of Expression Recognized

After the velvet revolutions and the radical reforms of the late 80s and the early 90s all the new democracies are now recognizing the fundamental human right to freedom of expression as it is laid down in article 19 of the Human Rights Declaration of 1948. Relevant paragraphs were incorporated into the new constitutions and governmental censorship over the media was declared as illegal. The Final Document of the CSCE Conference on the Human Dimension, which took place in Copenhagen, June 1990, confirmed this new broad consensus. As the 4th Follow-Up Meeting of the CSCE, Helsinki 1992, has showed, media question are no longer a controversial issue between East and West.

Theoretically and politically the way is free for the development of a democratic broadcasting system. The collapse of the old system has opened indeed the door for a "free marketplace of ideas" from Sofia to Riga as well as from Budapest to Moscow. The ideas of John Milton's "Aeropagitica" have "conquered" the East.

But the process of change is difficult and things look different if reality takes you from the mountains of perspectives to the valleys of problems. The

wind of change didn't change everything. There are still barriers, new and old ones.

There is a lack of historical legal tradition concerning free and independent media in a democratic society. The real meaning of the idea of a "public broadcasting service" is widely unknown and partly misunderstood. The existing broadcasting corporations (still mainly state owned) are lacking financial and technical resources, they are overstaffed (very often with the old personnel) and use outdated broadcasting technology. There are new efforts of the new governments to get back or maintain control in particular over television. A new kind of independent and investigative journalism has to be developed in a time which is overshadowed by social and economic problems, also for the working journalists. There are no experiences with advertising and (domestic as well as foreign) private broadcasters. Frequency allocation procedures are not yet established. The telecommunication infrastructure is underdeveloped. Rules for cable and satellite radio and television are very often not existing and international copyright regulation is not seldom ignored.[1]

Broadcasting Laws under Discussion

In all the new democracies broadcasting laws are now under discussion. New laws have ben already adopted in Czechoslovakia, Romania and Latvia.

The Federal Assembly of the Czech and the Slovak Federative Republic adopted the "Law on the Operation of Radio and Television Broadcasts" at the 30th of October 1991 and established a "Federal Broadcasting Council" consisting of nine members, three elected by the federal parliament and three both by the Czech and the Slovak parliament. Beside this "Federal Law" there are still separate Czech and Slovak broadcasting laws. After the elections in June 1992 it seems now that the "Federal law" will loose its meaning and the two national laws will be the real legal basis for broadcasting in the two parts of the former federation.

The Romanian Parliament adopted the "Audio-Visual Law" at the 5th of March 1992. The law established a "National Audio-Visual Council" which is responsible for broadcasting policy including licensing of public and private broadcasters.

The Latvian broadcasting law was adopted at the 6th of May 1992. A 25 member council was established which will govern the national broadcasting system in the future.

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1 See i.a.: E. Dennis/J. Heuvel, Emerging Voices: East-European Media in Transition. A Gannett Foundation Report, October 1990, and Cries for Freedom: The Struggle for Independent Media in the Soviet Union and East Europe, The Freedom Forum New York, October 1991

The discussion on the "Hungarian Act on Radio and Television", after three years of disputes, seems to come to an end this summer, although it is still unclear, weather the needed parliamentary two-third-majority for the law will be available because some of the controversial issues has not been settled by balanced compromises between the government and the opposition in the final draft.[2]

In Poland, the birth of a new broadcasting law looks like a "never ending story". After the failure of the "Mazowiecki Draft" and the "Bielecki Draft" (President Walesa did not sign the broadcasting law, which was already adopted by the parliament in December 1991) the Olszewski government presented against a parliamentary version its own draft of a broadcasting bill but it failed also. The Pawlak government, only a couple of weeks in power, had no time to redraft the law and it is still open weather the new prime minister Suchocka will give the broadcasting law high priority on the list of her first activities.

In Bulgaria the discussion turns still around the question weather a broadcasting law is needed or not. Opponents of a law argue, that it would be enough if the parliament adopts three words: "Broadcasting is free". Proponents of a law want to clarify and to define as concrete as possible the rights and duties of both the government and the broadcasters.[3]

Nevertheless, on the basis of a governmental directive, first licences for private Radio was given in late June 1992.

In Russia, after the coup in August 1991, president Yeltsin issued an "Ukas No. 500" on the 26th of September 1991 which established a provisional procedure for licensing of private broadcasters under the control of the Ministry of Mass Media and Information and the Ministry of Communication.[4] Late December 1991, a very detailed "Law on the Mass Media" (62 articles) was adopted, which abolished all kinds of censorship but regulated in a very detailed way the rights and responsibilities of journalists. (Article 47 ff.) One broadcasting related chapter established a Russian version of the American FCC, a Federal Broadcasting Commission (Article 30).[5] According to Article 30 of the Mass Media law, a special broadcasting bill will regulate the details for the work of the commission as well as for frequency allocation. The draft of this "Broadcasting Law of the Russian Federation" (55 articles) is circulating

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2 According to article 61 of the Hungarian Constitution laws on basic issues, affection the society as a hole, needs a two third majority in the parliament. The broadcasting law belongs to this category.

3 See W. Meyers, Media and the Law in Bulgaria: After the Constitution, unpublished conference paper, November 1991

4 See T. Southwick, Private Media Forms meet in the USSR to Plan TV Future, in: Cable World, Vol. 3, No. 45, November, 11, 1991, p. 36

5 Law on Mass Media of the Russian Federation, in: Rossiskaja Gaseta, Moscow, 8 February 1992 (Russian)

now among the various political bodies and it is expected that it will be adopted in fall 1992. An effort, supported by parliaments president Chasbulatow, to establish a special parliamentary broadcasting council which should "oversee" the work of all radio and television stations in Russia was rejected after a hot debate in the middle of July 1992.

In Lithuania several drafts for a broadcasting annex to the existing "media law" has been rejected. And in Estonia, where some governmental directives has amended the media legislation, the press and broadcasting committee of the parliament will table its first draft of a broadcasting bill this autumn after the constitution has been entered into force.[6]

The other European republics of the former Soviet Union like Belarus, Moldova or the Ukraine as well as the Caucasian republics Georgia, Armenia and Azerbaijan and the five Asian republics of Kazakhstan, Kyrgyzstan, Turkmenistan, Tajikistan and Usbekistan have started just now to think about the development of an own national broadcasting system and its legal foundation.

National Regulation in an International Context

Although all the new states are now looking for special national arrangements, the problems they are dealing with are more or less the same: The structural reorganisation of the old centralised broadcasting system, the creation of national broadcasting councils, the establishment of a financial basis for public broadcasting, the allocation of frequencies to private broadcasters, the regulation of cable and satellite television, the adoption of rules for advertising.

The individual regulatory activities on the national basis have to be seen also in a wider international context. In the "information age" radio and television do not know any frontiers. Practically, after the disappearance of the East-West-conflict, there is a "common information and communication space from the Atlantic to the Urals" in Europe. Satellites like "Astra" cover the West and the East as well as the North and the South of Europe.

This factual situation has to be taken into consideration when the new individual countries are going to draft their national broadcasting laws. Harmonization of media legislation is a challenge which doesn't stop today at the frontiers of the European Community. International instruments like the ITU Radio Regulations, the Council of Europe Convention on Transfrontier Satellite Television and the EEC Television Directive constitute a general framework for national legislation in this field. And indeed, in all the new

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6 See: M. Lauristin/P. Vihalemm, Estonian Mass Media: Past, Present and Future, in: European Journal of Communication, Vol. 5, 1990, p. 489 ff., see also: S. Hoyer/B. Skov/L. Sandsmark, The Role of Media in a Changing Society: Papers from the Baltic-Norwegian Conference, University of Oslo, Oslo 1992

democracies, regardless of the specific national conditions, there is a clear political will to make the new national broadcasting system "compatible" with the European instruments and to introduce a "dual system" of public and private broadcasting which would fit into the existing European broadcasting architecture.

But when it comes from the "political will" to the "daily practice" the limits become visible. Beside of the material and financial constraints, which are understandable, there are also barriers rooting in different ways of thinking, in different traditions and different cultures.

Broadcasting Media: Governmental Instruments or Public Servants?

One of the main issue is the different understanding of the relationship between the government and the media. In the old centralized system, the media were seen as "instruments" of the party/government which has to give "guidance" to the people. The new governments, after being in power, trying to keep a certain kind of control over broadcasting, and in particular over television. They argue, that after free elections they are now democratically legitimated to "use" the media for their own political purposes. In the past, television was "theirs", now it is "ours".

In all the Eastern societies there were no experiences in the last forty years with a broadcasting system, independent from government, serving (more or less) the interest of the public, criticising the government and functioning as a "watch-dog" against the misuse of power. That the peoples "right to know" determines the use of the "media freedoms" is a new experience which has to be made. This "missing experiences" influence the process of change and can constitute also a barrier for the continuation of the reform of the broadcasting system.

While changes of programmes and persons took place very rapidly immediately after the revolutions, changes of structures and mechanisms did not follow soon. To refer to a drastic example: After the changes in Latvia the new director general of LTV got the order from the government to reserve two of the four Betacam-cameras: one for the daily activities of the prime minister, the other one for the daily activities of the president of the parliament.

The question how far governmental influence (or control) should go in the new broadcasting system is also in the centre of the discussion around the broadcasting laws, in particular when concrete details like the procedure for the nomination of the director general for radio and television and the composition of the advisory bodies are on the agenda.

Generally speaking the parties in power prefer the "old mechanism" where the Prime Minister has the right to nominate the senior officials for radio and television. The opposition parties are in favour of an election by the parliament. The professionals in the broadcasting company would prefer an

election by an independent body. And if there is a country with a presidential system, the president wants to have a right to interfere into the nomination procedure.

Who Nominates the Director General for Radio and Television?

The Hungarian discussion can be seen as an illustrative example. The nomination procedure was one of the key issues in the long debate around the broadcasting bill. The third draft from March 1992 had still two versions: Version A gave the Prime Minister the right to nominate the presidents and the vice presidents of the Hungarian Radio and Television companies. According to Version B television and radio presidents should be elected by parliament by a two third majority. The governmental coalition, strongly supportive for Version A, succeeded in the final negotiations.

In Poland and Czechoslovakia the new governments did not change the "old" rule that the prime minister has the right to nominate the Director General for Radio and Television. The new Romanian Law has no special regulation for the nomination procedure, so the old practice will continue. In Russia and Estonia, the Director General is nominated by the Supreme Soviet. In other republics of the former Soviet Union it is first of all the prime minister who can hire and fire the DGs for radio and television.

The same problem can bee seen in the various models for the composition of Broadcasting Councils, Radio and Television Advisory Boards and other institutions or bodies which should overview the state/public broadcasting companies or allocate frequencies to private broadcasters. The bodies are mainly composed of governmental officials or parliamentarians. Independent experts, representing the public, are, if represented (and this is the exception), always in a minority position. Although many politicians in these countries have studied among others the German experiences, the German "Rundfunkrat" which limits the membership of representatives of the government and the parliament to one third, was not taken as a "model".

According the last draft of the Polish broadcasting bill the planned "National Broadcasting Council" will be constituted of nine members, three nominated by the Sejm, three by the Senate and three by the president. The government favours even a solution, where the Council should have only the right to give "recommendations" while the decision power should belong to the chairman of the council, a "Secretary", who should be nominated by the Council of Ministers.

In Czechoslovakia, the new law established a "Federal Council for Radio and Television". Three members are elected by the Federal Parliament, three by the Czech and three by the Slovak Parliament.[7]

In Romania, the new "National Audio-Visual Council" will have eleven members: two nominated by the president of Romania, three by the government and six by the parliament.[8] The law stipulates in Article 25, para. 2, that "members of the Council are guarantors of public interest in the Audio-Visual domain and they do not represent the authorities who nominated them" but Romanian broadcasters are very doubtful on this. According to Article 27, the Council is financed by the government and "members of the council are paid at the rank of under secretary of state and the president is paid at the rank of secretary of state." Irritation creates also Article 39 of the same law. Article 39 states, that "if provisions of Article 2, para. 2 are being violated by programming and broadcasting of products, punishment is provided for by the penal law, increased by two years." Article 2, para. 2 says inter alia, that "defamation of the country and of the nation is forbidden by law".

In Russia, the provisional commission for licensing of private broadcasters is headed by two vice-ministers from the Ministry of Mass Media and Information and the Ministry of Communication.[9] According to the draft of the new broadcasting law, the Federal Broadcasting Commission should have ten members: three will be nominated by the president, three by the constitutional court and six by the two chambers of the parliament.

Financial Difficulties

One of the explanations for the strong involvement of government and parliament in the broadcasting activities is the financing system. All broadcasting companies in these countries are more or less dependent from governmental subsidies.

Licence fees in Hungary, Poland and Czechoslovakia cover not more than up to fifty per cent of the expenses. Advertisement is a growing source of income, but not yet developed and on a low level. In the Baltic republics, Russia and the other members of the CIS licence fees are still unknown. Even if the introduction of a licence fee system is now under consideration the difficult social and economic situation for the majority of the people makes it impossible to introduce such a system within the next two or three years. Broadcasting remains so dependent from governmental subsidies.

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7 See Article 18 of the "Law on the Operation of Radio and Television of the Czech and Slovak Federal Republic, October, 30, 1991

8 See Article 25 of the "Audio-Visual-Law" of Romania, March, 5, 1992

9 Information Bulletin of the Union for Cable and Satellite Television, Moscow, No. 1, 1992, p. 8 (Russian)

But even governmental subsidies are often not available. This can be seen in particular in the case of the TV company "Ostankino", the former first channel of the Soviet Union. The non-Russian CIS members are not ready to pay for "Ostankino" because they need the limited financial resources for the development of their own national television network. Nevertheless, Ostankino, after changing its programme along "western experiences", is now an attractive channel which has high viewing rates in all the republics of the former Soviet Union, including the Baltic Republics. On the other hand this channel is seen by some politicians as a potential for "Russian cultural imperialism". For the moment, Russia pays for "Ostankino". But the Russian Federation has with RTR, the former 2nd Soviet channel, already an own national network and will have difficulties to pay for two competing channels. Plans to transform the channel into an international "Euro-Asian Broadcasting Network" has failed so far. Who is going to pay for "Ostankino", the world largest TV company with 25 000 employees, in the future?[10]

In the three Baltic republics, governments have reduced the subsidies for the national channels, but the costs, in particular for programming and transmission, are increasing very quickly. Although it would be economically reasonable, cooperation among the three broadcasting companies in Estonia, Latvia and Lithuania is on a low level. In Hungary, the government stopped the transfer of one billion Forint to Hungarian Radio and TV. Romanian and Bulgarian television are struggling with growing financial shortcomings. In Poland, the idea to decentralize broadcasting and to establish regional Radio and Television companies (like in Germany in the ARD system) is still on the discussion table but, if implemented, would destroy the existing finance system. Ignoring the financial implications, Slovak and Czech television are on the way to split and to become two independent broadcasting companies.[11]

Although it is politically understandable, that independent nations want to have an own national broadcasting company, a further diversification limits not only the possibilities to produce high quality programmes but promotes also greater dependency from governmental subsidies.

Chances for Private Broadcasters

Against this background, private broadcasting will play a growing role in independent news reporting and in fostering pluralism and diversity. And indeed, first private radio stations like "Echo Moscow" in Russia, "Radio Zet"

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10 See: W. Kleinwächter, Russischer Rundfunk im Umbruch: Staatliches Einheitsfernsehen fällt auseinander - Private drängen auf den Markt, in: Funk-Korrespondenz, Vol. 40, No. 11, March, 12, 1992

11 See: S. Brecka, Working Conditions of Slovak Journalist in a new Socio-Political and Economic Situation, unpublished conference paper, April 1992

in Warsaw, "Radio Coucou" in Tallin and "Radio Bridge" in Budapest has challenged meanwhile the old state monopoly. "Echo Moscou" was the only opposite voice in the air during the days of the coup in Moscow in August 1991. "Radio Zet" is with a rating of 38 per cent number one in Warsaw.

The main problem for private broadcasters is still frequency allocation. Although there are clear statements from all the new governments to open the frequency spectrum for private broadcasters, there is only little progress.

Frequency allocation procedures were unknown in the past. The frequencies were in the hand of the government (the ministry of communication) and mainly controlled by the military and the party. Realizing, that the frequency spectrum belongs to the natural resources of a country (which can be eventually sold for high prices), the majority of the new governments have stopped allocation and introduced "frequency moratoriums", like Hungary or Poland. Only some exceptions for giving licences were made, mainly for political reasons or on an experimental basis. In some other countries private broadcasters started without any licensing as "pirates" and got later semi-official approval.

Regardless of the missing legislation, more than 50 radio broadcasters in eastern and central Europe and the republics of the former Soviet Union are meanwhile in the air and hundreds are on the waiting list.[12] Partly supported by western capital, they found out very quickly what the public wants to hear. Although the Advertisement market is still in the infant stage, the low costs of local radio broadcasting allowed a promising start even under bad economic conditions.

As far as private television is concerned the situation is different. On the one hand the high costs for television prevent national entrepreneurs to start a private national TV channel. On the other hand the national frequency spectrum for television is limited.

Although there are numerous initiatives in nearly all countries - only in Romania there are now 16 local TV companies sending their programmes on the first or second channel when the national TV has finished its daily programme - the majority of these initiatives has no solid financial background. Success stories like NAP TV in Budapest or TV Echo in Wroclaw remain exceptions and even these companies, which found a "niche" in the past, will have difficulties, if the national TV channels will be open for competition with foreign applicants.

Transnational media corporations like Berlusconi are already waiting for the "filets" of the frequency spectrum and it is not an unrealistic exaggeration to expect, that even the national state/public broadcasting companies will soon come under foreign pressure. One option is the development of a new kind of public-private partnership in the field of television.

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12 Only in Hungary there are 24 TV and 29 Radio applications, see: Cedrus Media, Budapest, August 1991, p. 3 f.

In Romania, the 2nd channel of Romanian Television concluded in May, 13, 1992 an agreement with the British company "Atlantic Television Ltd." on the establishment of a new channel which will overtake the former 2nd national channel. 80 per cent of the shares are belonging to Atlantic Television Ltd., 20 per cent to RTV.

Discussion on media laws includes therefore also articles on the limitation for the participation of foreign capital and for a quota system concerning programme content with the aim, to protect national broadcasters and cultural identity. The "frontier lines" reaches from 33 per cent via 49 per cent to 80 per cent. In the Baltic republics there are nearly no limitations, Hungary is more restrictive.

Language constitutes a natural barrier against unwanted internationalized low quality programmes, but in some countries, like in Hungary, a special programme content related "quota system" is seen as an additional necessity. In the draft of the Hungarian broadcasting law a quota system is proposed which goes even further than Article 4 of the EC Television Directive.

Regardless of this legislation, satellites have already paved the way for transnational broadcasters also in these countries. RTLplus via Astra can be seen for instance in Riga as well as in Sofia. The main barrier to reach a broader audience is for the moment the price for a satellite dish. Another way to come down to Earth with international programmes is cable television. In the majority of the new countries numerous private cable TV companies has been established in the last years, distributing satellite programmes to their consumers, very often without any permission, neither by local or regional authorities, nor by the copyright owner.

Rules for advertising, which were unknown in the past, are also under discussion now. The new advertising regulation is generally guided by the two European instruments of 1989, the Council of Europe Convention and the EEC Directive. Even if a special legislation is still missing, broadcasting companies follow these rules on a voluntarily basis, although there are some attempts, particularly in the Baltic countries and in Bulgaria, to introduce advertising for tobacco.

Domestic Governmental or Foreign Financial Control?

By moving towards democracy and a free market economy the new countries in Eastern and Central Europe as well as in the republics of the former Soviet Union will meet very soon new challenges to the right to freedom of expression.

To establish and free and independent broadcasting system, national efforts need to be complemented by international support. Foreign training of journalists is not enough. There is a need to assist in the building of democratic

institutions as well as in the development of a telecommunication infrastructure. This includes also material and financial assistance.

Against this background, the CSCE, where all the new countries are participating states, could and should play a leading role in close cooperation with the Council of Europe and other governmental and non-governmental organisations. The new CSCE Office on Democratic Institutions and Human rights (ODIHR) in Warsaw has already got the mandate to deal with media questions.[13] According to the Final Document of the Helsinki CSCE Meeting 1992 a CSCE seminar on media issues will be organized in autumn 1992. It will discuss, inter alia, the relationship between independent and government media in a democracy, ethics in journalism, media in a market economy and frequency allocation procedures.[14]

The ODIHR could function in the future as a "clearing-house", as a "meeting point" and an "early warning system" which would give signals if the new rights and freedoms in the field of information and communication are threatened again in the new democracies.

Continuous efforts are needed, otherwise there is a danger, that the new democracies in Eastern and Central Europe as well as the republics of the former Soviet Union will not become "Europized" but "Latin Americanized".

The struggle for an national broadcasting system, which is free and independent from domestic governmental as well as from foreign commercial control seems to be a long and hard way and it is not sure that the aim will ever be reached.

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13 See: Prague Document on Further Development of CSCE Institutions and Structures, CSCE-Doc. 2-C/Dec.2, Prague, 30 January 1992

14 See: The Challenge of Change: Helsinki CSCE Document 1992, 11 July 1992, see also: Proposal for a Seminar on Free Media (USA and Ukraine), CSCE-Doc. HM/WG3/19, Helsinki, 5 June 1992

New Freedoms - Old Problems?
The Role of Journalists in Times of Change

Colin Sparks

The main outlines of the media systems in Europe both East and West are already visible. If five or ten years ago there was still room for debate over whether the state or the market should play the predominant role in organising the mass media, today that is no longer an issue. The reality is clear: for the foreseeable future the main determining force of the media will be the market. In the west, the press has always been predominantly, although by no means exclusively, market-led and that situation is rapidly being reproduced in the east. In broadcasting, the case is a little more complicated in that various forms of state regulation, often justified in terms of the need to maintain public service broadcasting, retain a vitality in the west and there is scope for considerable debate and negotiation as to exactly what balance there should be between the workings of the market and state intervention both in west and east. But any such intervention is likely to be a mere modification of a system whose basic dynamic is the market.

This paper is concerned to think about the consequences of these realities for issues of freedom of the press, particularly as they impact upon the working situations of journalists. We cannot here enter into any of the fascinating arguments about the precise details of media policy, or whether particular ways of organising the mass media are either justifiable or desirable. We take these realities as given and ask only what their implications are.

From Old to New

It is commonly argued, at least in the west, that the nature of the transformation Eastern Europe is from a servile and subordinate media which distorted reality in the interests of the ruling elite to one in which journalists will at last be able to tell the public truth without fear of the consequences. This is an appealing picture, and one which rests upon an important element of truth. The media systems of the old regimes were indeed subordinated to the political dictates of

the party leadership. It is possible to exaggerate the degree of this dependence, particular in the dying years of stalinism, during which the internal decay of the societies and the increasing power of oppositional movements meant that there was rather more room for manoeuvre than in the past, but the picture is in essence correct. Censorship, both imposed from without and regulated by the media itself, were rife. The inclusion and exclusion of material was determined by assessments of the political interests of the elite and of powerful individuals within it. While critiques of the failures of individuals were permitted and indeed encouraged, the social system was not subject to any critical attention. The list of restrictions, of dependence and of sheer banality is an endless and familiar one. There was no sense in which one could speak seriously of a free media and of independent journalists.

What is rather less evident is whether the positive picture of the future which the commonplace account paints is at all accurate. Here, of course, we leave the realm of the empirically-verifiable and enter the world of ideology. Obviously, quite a number of writers, particularly in the west, grew up with the Cold War, absorbed its ethos as part of their intellectual formation, made comfortable careers out of propagating its myths, and are understandably reluctant to face up to new realities. It is easy to understand, in both sociological and psychological terms, the continuing appeal of the old ideas, and with ideologists, of course, it is very difficult to win an argument even when one has rather a lot of empirical evidence. Since the process of transition in eastern Europe remains incomplete, it is rather difficult to present such convincing empirical evidence.

The future situation of the media and of journalists is not, however, entirely a matter of speculation. We do have one rather concrete piece of evidence as to what happens as a stalinist system changes to a market-dominated one: the case of the former DDR. There is no doubt that the old "German Democratic Republic" was one of the more tightly-controlled of the eastern countries. True, it was not Ceaucescu's Romania, but its leadership had a confidence and an authoritarian bent more or less to the end. It is also the case that the transformation of the media system is effectively complete. Broadcasting has been restructured on the Federal Model and its leading posts overwhelmingly filled by 'Westerners'. The press has been reorganised on market lines and many papers have new, 'western', owners. We can see in this case one probable version of the future of other eastern media systems.

The impact of this change upon journalists, and upon their ability to discharge the functions of honest reporting which is the central category of any serious theory of press freedom has been the subject of some research. What this seems to demonstrate is that journalists in the former DDR played an active role in the downfall of the old regime. There was then a period of extreme freedom in which journalists were able to discharge what seemed to them a close approximation to their proper democratic function. This period of transition, the "**Wende**" lasted only a short time and has been followed by the

imposition of new controls and different forms of restriction. As one study puts it:

> East German journalists would argue that...in the heyday of the ***Wende***, the high revolutionary period of autumn 1989, the Communist journalists were not evicted, nor was the Communist press drowned out by new journals of opinion. Instead, most of the GDR journalists abandoned the Communist Party, or SED, and joined forces with those intent on bringing down the Communist order altogether. Unlike elsewhere in the former socialist bloc, new journals did not replace the Communist press - the press became non-Communist.
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> In these eyes of these journalists, problems have again risen in the 1991 postCommunist press. After experiencing seven months of autonomy, the journalists now mourn the death of the democratic journalism they worked to fashion. The East German journalists, most of them former Communists, today nostalgically refer to this short ***Wende***-era journalism (October 1989 April 1990) as the democratic era of GDR journalism. What they proudly established during the post-Communist period of the German Democratic Republic has been dismantled, they claim, by West German direction after reunification[1].

We might perhaps want to enter one or two reservations to this account. The experience of the elation of freedom followed by the re-establishment of a

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1 M. Boyle 'The revolt of the Communist Journalist: East Germany' in Media, Culture & Society, vol. 14; no.1, January 1992. p. 133. See also C-E. Schönfeld East German Media. Unpublished PCL Dissertation: 1991. Concerned mostly with broadcasting, he writes: "Between November 1989 and October 1990, the political pressures on East German media had been very much reduced and the economic pressures had not yet arrived. Without these pressures the media gained far more acceptance, more quality and audience feedback which shows that there are alternative communication models to what we know as public service or commercial media, and the example shows that it is worth pursuing these alternative to improve quality as well as acceptance. The East German example shows that quality and acceptance are not necessarily excluding each other. It seems very much that new structures, subjects and voices which evolved from the changes are now being dismantled. But at the same time there are many people in the audience and broadcasting staff who have experienced a situation where the media changed from a "distributor" into a "communicator" and many of them keep that as an ideal"(19).

more 'normal' situation is not unique to the death pangs of stalinism. The collapse and aftermath of other dictatorial regimes - Portugal in 1974, for example - produces similar experiences. It is also the case that the survival of large parts of the old media, both press and broadcast, is more general in eastern Europe than is suggested here. However, the general picture is quite clear: the trend in Eastern Europe is not from media control to media freedom. It is rather from media control, perhaps through a period of genuine freedom, to new forms of media control. However unpalatable this proposition may be to the dinosaurs who are still fighting the battles of the cold war, it is nevertheless the inescapable conclusion of the evidence.

On the other hand, it would be extremely foolish to imagine that there is no difference in the situation of journalists. It is clear that the collapse of one party rule has been replaced by a situation in which there is indeed greater freedom for the press. The degree of freedom of course varies from country to country and many of the old structures of control have proved attractive to the new governments, but it is unlikely that anyone would maintain that there was not today greater freedom than in the recent past. If the movement is not from subordination to freedom, it is at least one in which subordination is less complete. Some of the ways in which the new controls are exercised are different from the crud forms which existed in the past, although their subtlety does not necessarily make them any less objectionable. It is also true that the prospects for stable parliamentary governments in most of the formerly stalinist countries are rather less good than in the case of the former GDR. Consequently it is not all clear that something very like old forms of political control might not be reinstated in full force, this time under the banner of anti-communism.

On balance, however, it is reasonable to suppose that it is the new restraints on press freedom and upon journalists arising from commercial control of the media that will form the main problems for tomorrow. It is to these difficulties, rather than the good old slogans of the cold war, that serious attention must now be paid.

Some Familiar Themes

The problems for freedom of the press posed by a commercial system are not new ones. They are extremely familiar from the experience of the media in the west. I do not think that I need here to argue in great detail what is easily and publicly available elsewhere. I shall simply rehearse what seem to me the main problems so that we will have before us a clear notion of the problems which we need to address.

The first problem arises from the fact that in making the ownership of newspapers, broadcasting outlets and other media private property one subjects their direction to the whims of those owners. Owners decide who will edit a

paper and, at least indirectly, who will work for it. It is also their right to decide the political direction of the paper, and all that this implies for the nature of reporting and commentary[2]. There are instances of owners choosing not to exercise this power and there are instances of them choosing to use it: the point is that the decision is theirs alone, and not subject to any form of democratic control. What this can lead to is well documented and I refer only to the topical and spectacular case of the late Robert Maxwell, of whom a mass of evidence testifies that he interfered on a daily basis with the reporting and editorial commentary of the newspapers he owned[3]. The obvious and logical conclusion of these realities is that press freedom needs to be protected against the owners.

The second problem is that it is in the nature of a competitive, market driven economy that it leads to the commercial failure of the weaker companies, bankruptcies and take-overs, and thus the concentration of ownership. These general tendencies are powerfully present in the mass media. The trend towards monopolistic and oligopolistic situations is well-known, and with it the concentration of the power to provide public information in very few hands. In the US in 1987 only 32 per cent of the metropolitan population had any choice between daily newspaper titles, including those owned by the same company[4]. In the UK in the same year the population had a much wider choice of titles but, 72 per cent of the national daily circulation was controlled by three companies[5]. It is evident that the market cannot provide pluralism in the mass media and that press freedom needs to be defended against these monopolistic tendencies.

Finally, and in my view most importantly, the commodification of information, and the funding of information media in large measure by advertising revenue leads to a stratification in the provision of public information. Advertisers are understandably concerned to reach their target audiences at minimum cost and will thus only finance those media which are likely to deliver the kinds of readers or viewers in whom they are interested. This means that there is a tendency to provide more and better material for wealthy audiences than for poorer ones. In its extreme form, in the case of the UK national press, stratification has reached the point where only 15 per cent

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2 So complete is this that, for example, the Federal German constitution provisions for co-management specifically exclude the media industries, guaranteeing sole right to determine 'tendency' to the owner.

3 Since his death and the subsequent revelations as to his commercial activities, there has been a great deal of publication about his interference with editorial policies. The best known, full of detailed examples, is T. Bower (1991) Maxwell the Outsider. London: Mandarin.

4 L. Bogart (1989) Press and Public. Hillsdale, NJ: Lawrence Erlbaum. 19.

5 C. Seymour-Ure (1991) The British Press and Broadcasting since 1945. Oxford: Basil Blackwell. 44.

of the adult population have access to a newspaper which contains serious news and current affairs[6]. Press freedom thus needs also to be defended against the tendency towards the failure to inform citizens which is endemic in a market-driven media.

None of these points will come as a surprise to informed and honest observers of the media in the west. Many additional and subsidiary points could be added. However, I think that enough has been said to establish the need for some form of defence of press freedom against the natural tendencies of the unregulated market.

State Intervention

The above problems are so widely recognised that even governments which are otherwise extremely enthusiastic about the free market as the solution to most social evils have recognised that it cannot be relied upon here. One clear example was the government of Mrs Margaret Thatcher, which in 1990 legislated to introduce what it believed was a greater degree of market competition into commercial broadcasting. In the Act of Parliament governing this re-organisation, the government included provisions obliging the holders of broadcasting franchises: "to broadcast in the licensed service news programmes of high quality dealing with national and international matters"[7]. The Act further obliges licensees to ensure: "that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality"[8]. The regulatory body (the Independent Television Commission or ITC) is enjoined to: "do all that they can to secure that there are excluded from the programmes included in a licensed service all expressions of the views and opinions of the person providing the service on matters...which are of political or industrial controversy or relate to current public policy"[9].

This comprehensive distrust of the power of private ownership and of the workings of the market on the part of a government so devoted to the virtues of unrestrained capitalism might seem to suggest that state regulation is the best way to solve at least the first two of the problems we identified above. Certainly these, and the subsidy measures which operate in many European countries do go some way towards controlling the necessarily deleterious

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6 See Sparks, C. (1992) "The Press, the Market and Democracy" in Journal of Communication, vol. 42, no.1, Winter 1992. 36-51.

7 Broadcasting Act 1990. C. 42. London: HMSO. 31.-- (1) (a). 31.

8 Ibid.. 6. -- (1) (a). 6.

9 Ibid.. 6. -- (4). 7.

effects of the market on democratic life[10]. I am, however, reluctant to commend state intervention as the solution to the problems of the press.

Governments have as their proper business political control. The press is supposed to have as its proper business the investigation and exposure of the doings of government. It is foolish to imagine that either are capable of denying their own nature. The very same government which passed the high-sounding phrases quoted above mounted a sustained assault on press freedom, culminating in a ban on the broadcasting of the words of a duly-elected member of parliament[11]. It is difficult to see such a government as the guarantor of rights and liberty[12].

A similar limitation applies to the legal apparatus of the state. Law cannot at bottom be anything other than a codification of the social relations of the society which it regulates and in societies in which there are marked inequalities of wealth and power the law will tend to uphold them. The law itself is administered by judges who, outside of the USA, are seldom subject to any process of election and who tend to be rather unrepresentative of the society they regulate: for example, they are mostly male. As a consequence, in the case cited above of the broadcasting ban on a legal political organisation, both the British judiciary and the European Court of Human Rights upheld the right of the government to enforce such a policy. There is a certain distance between the fine phrases which governments subscribe to and what they actually do. For example, the Council of Europe has many fine declarations on human freedom to which its members, including Turkey, all in theory subscribe. The Turkish government, until 1991, was so devoted to freedom of expression in practice that it banned its large Kurdish minority from speaking, writing or broadcasting in their native tongue[13]. The truth is that however

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10 Professor Voorhoof's excellent article in this collection summarises the main measures which exist in Europe today.

11 For an independent summary of the British government's record on press freedom see M. Doornaert and S. E. Omdal Press Freedom Under Attack in Britain. IFJ Special Report, 1989.

12 Indeed, it was convincingly argued by broadcasters during the parliamentary debates around the Act that the introduction of the clause obliging the broadcasters to observe 'due accuracy and impartiality' was motivated not by a desire to ensure that they did, since that was already the dominant practice in the former highly regulated system. It was claimed that it was introduced in order to intimidate broadcasters from addressing contentious subjects, since the government would be in a position to resort to the courts to prevent the transmission of programmes of which they disapproved much more easily than in the past.

13 It has not got much better recently. In 1992, its behaviour towards this group was such as to persuade the German government to terminate arms shipments. Other members of the Council of Europe, including of course the

desirable it may be to have such legal provisions, they cannot be relied upon as defences of press freedom.

Self-regulation

The idea that the media can be relied upon to police itself is sometimes advanced as a possible remedy for abuses of press freedom. In order to avoid the excesses to which governments are necessarily prone in their dealings with the press, it seems to make sense to allow those familiar with industry to remedy its shortcomings. Unfortunately, there is in theory and practice little to recommend this course of action.

The theoretical problem concerns the boundaries of the group which is to carry out the business of self-regulation. If the regulatory body consists exclusively of the employers or their immediate representatives then it is difficult to see how it might act as a mechanism for controlling the shortcomings of an industry for whose conduct they are themselves already responsible. To paraphrase Adam Smith, all meetings of press barons are conspiracies against the public. An attempt is sometimes made to overcome this problem by suggesting that such bodies should include representatives of both employers and working journalists. This is a form of industrial organisation which found its highest development in fascist countries and it commended itself to Mussolini and Franco precisely because, by bringing together the powerful and the weak in one body, it effectively ensured that only the voice of the powerful would be heard[14].

The record of such bodies in practice bears out these theoretical points. The British press was for more than thirty years the site of an experiment in selfregulation, called the Press Council. This body was financed by the employers and its majority consisted of editors and senior journalists. It did, for a long time, contain representatives of the main journalists' union but eventually they voted to withdraw on the grounds that the body was utterly ineffective. It failed completely either to defend press freedom or to remedy the frequent and scandalous abuses to which the British press is notoriously prone. A prominent media lawyer concluded that:

British government, remain unconvinced of the need to apply to Turkey the same standards as they currently expect from new applicants. They repeat that: 'they will not lower their standards'. With members like Britain and Turkey, it is difficult to see how their standards could get any lower.

14 A foolish attempt is sometimes made to disguise these realities by the use of the term 'professional bodies'. This is a use of the term 'professional' as pure ideology without scientific content. It is not to be supposed that even on a liberal interpretation of the term that it can be taken to cover both categories.

> The performance of the Press Council has been measured in this book against the yardsticks provided by its own constitutional objectives. In each respect - the adjudication of public complaints, the maintenance of ethical standards, the defence of press freedom and the combating of monopolistic tendencies - the evidence has dictated the conclusion that the council does not satisfactorily achieve these objectives.[15]

So unsatisfactory was the Press Council that, under the threat of legislative intervention, it wound itself up in 1991. It was replaced by another body, the Press Complaints Commission, with a narrower remit. As this body is just now completing its first year of operation it is a little early to pass judgement, but in the view of many observers it is as ineffective as its predecessor.

The failure of self-regulation is not the result of the moral shortcomings of media owners or their close editorial assistants. It rather results from their position as businesspeople. In order to keep in business, they must obviously make a profit, and all other considerations - truth, taste and public responsibility - come second to this. If they are so fortunate as to be in a position, and it is usually a monopoly position, to disregard the cruder commercial incentives, then their adherence to journalistic standards is a matter of personal choice. But if they are in a fiercely competitive market, they are forced to produce media artifacts which command enough of the right sort of audiences. If they fail in this, they go bust or are taken over. If the market demands sensation and scandal and trivia and entertainment - and experience shows that it does - then this they must provide, whatever their personal views. Perhaps some of the owners of the media are committed to free and responsible journalism as individuals, but as owners of commercial enterprises they are perforce only interested in such matters to the extent that they are profitable[16]. It is therefore foolish to image that they can provide a reliable bulwark against threats to press freedom.

Professional Standards

The third possible source of support for free and independent journalism is the working journalists themselves. It is after all the standards of behaviour of

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15 G. Robertson (1983) People Against the Press: An Enquiry into the Press Council. London: Quartet. p. 132.

16 Unfortunately, these considerations apply equally to the editorial collective of journalists as to the single individual capitalist owner. There may be other reasons for preferring the collective form of ownership, but in a market economy it cannot be a guarantee against the pressures of competition and their associated impact upon the practice of journalism.

journalists themselves which determine what finally appears in the mass media. The idea that journalists themselves should police the behaviour of the media in order to ensure that it sustains the high standards which theories of democracy demand of it is an attractive one and it certainly deserves far more serious attention than either of the preceding two suggestions. It is often argued that if journalists had the right 'professional ethics', then the problems of bias, distortion, inaccuracy and trivialization which are endemic to the market-led media could be overcome.

There are problems with this approach. In the first place, the assumption that journalists can have 'professional ethics' rests upon the assumption that journalism is a profession. The model is one of the older 'true' professions: medicine and the law. There, self-regulation is certainly one of the central principles. Unfortunately, journalism is not a profession in this sense. It certainly involves special skills, but journalists do not have the power to decide who becomes a journalist: owners and editors control the process of hiring and firing. Journalism is a highly-stratified occupation in which all journalists are certainly not of equal esteem. There is no internationally, or even nationally, required training for journalists without which it is impossible to practice. Journalists do not control the essential features of their working lives. The truth is that journalism is a skilled occupation but not a profession.

The point of this argument is not merely scientific pedantry. The idea of selfregulation is attractive because it is based on the idea of a community of equal experts mutually determing the appropriate standards of their own behaviour without reference to outside pressures. If one removes that necessary equality and independence, then 'professional ethics' becomes one of the means of managing relations between unequal parties and has an inbuilt tendency to favour the interests of the more powerful.

It is not even clear that journalists should aspire to proper professional status if they wish to be in a position to contribute to freedom of the press and freedom of expression. It must be remembered that the medical profession's right to control entry is designed to exclude the 'unqualified'. Applying such a concept to journalism would surely be to the detriment of the right of self-expression. It should be further noted that the power to enforce the medical profession's decisions about competence to practice ultimately lies with the state, which will prosecute the unlicensed medical practitioner. This is hardly a situation compatible with a democratic media system. The problem is particularly acute in advanced industrial societies in which the 'right to communicate' is in practice extremely restricted. While there may be very considerable freedom for personal communication, ***public*** communication, which is surely the form most important for theories of democracy, is in reality the preserve of prominent public figures and those employed by large media organisations. One only has to observe the process of a modern election campaign to note that the voice of the electors themselves is seldom if ever heard. One can certainly make out a very strong case which suggests that the

'professionalised' control of the right to communicate is an obstacle to democracy and should be weakened rather than reinforced.

Despite these objections, however, I am reluctant to discard journalists as the defenders of press freedom in the same way as we obviously must reject the state and law on the one hand and the owners on the other. This is not because journalists are in some way or other naturally better people than politicians or lawyers or capitalists. Rather, it is because alone among the three groups we have considered journalists share with the general public a fundamental interest in a free media. The state is necessarily and primarily interested in political control. The owners are necessarily and primarily interested in profit. Only the journalists are necessarily and primarily interested in reporting and interpreting the world: that is their ***raison d'être***.

The real difficulty lies not in the notion that journalists should have a code of behaviour which encourages them to act independently and to work in the interests of public enlightenment. That would be wholly to the good. The real problem is with the attempt to articulate that code and its enforcement in the language of the true professions. In reality this means leaving the individual journalist who wishes to adhere to the code, or who has transgressed it, confronting not a jury of her peers but her employer and her editor. It requires very considerable qualities of courage and resolution to adhere to a code in the face of pressure from people who can destroy your career, render you unemployed and make it very hard for you to find work as a journalist ever again. Some people have that sort of personal strength, and they are to be congratulated on it, but we cannot assume that it is as common amongst journalists as the ability to type.

The only way that such a code can be defended in practice is through the collective organisation of journalists. Only acting together have they the power to force editors and owners, and government and lawyers, to back off from threats to press freedom. This is why trade union organisation amongst journalists is the central mechanism which can defend media freedom.

Conclusion

To argue that independent trade union organisation amongst journalists in eastern Europe is the first necessity for the defence of media freedom is not to suggest that the existing journalists' trade unions are strong enough to win these battles, or that they always act in the interests of press freedom. Journalism is a notoriously 'individualistic' occupation and the lure of promotion or other rewards is often enough to turn the serious union member into an accomplice of the editor and employer[17]. Collectively, too, journalists'

17 Journalism is not unique in this, of course. Many academics are quite capable of the same sorts of behaviour.

unions have often failed to support other groups of workers who were concerned about press freedom. The journalists and the journalists' unions have lots of shortcomings. However, they can be changed and improved in ways that states and employers cannot.

We should remember that the shift in the former DDR was not simply from state control to capitalist control. There was that brief period of seven months when the media was genuinely free from state control and from commercial imperatives. It was during that period, when the journalists were able to exercise their occupation most consistently, that they felt free and discovered new relations with their audiences. Trade unions cannot produce that social freedom but collective organisation alone can give journalists the strength to win a little space from the state and the market and to enjoy at least a little of the media freedom of the ***Wende***.

Subject, Object or Equal Participant? In Search of a Realistic Goal of Communication Democratization in Poland

Karol Jakubowicz

The drive for democratization of communication usually takes the form of a struggle to extend the range of "subjects of communication" (Oledzki, 1984), i.e. for individuals and groups shut out of active participation in the communication process to break through to the ranks of active senders. In normal social and political circumstances, this extends to the groups which wage the struggle for the status of subjects of communication; having won that struggle, they are not necessarily eager to extend the same status to everyone. The goal of turning everyone into a subject of communication, which is what real democratization of communication should theoretically do, would require obliterating the distinction between senders and receivers and creating the overall conditions for all members of society to be able freely and at will to initiate acts and processes of communication, e.g. to engage in free and equal communication.

The desire to bring this about proceeds in part from the conviction that communications and information are central to the exercise of full and effective citizenship. Murdock and Golding (1989) point out that this adds another dimension to T.H. Marshall's classic analysis of the three basic aspects of citizenship - civil, political and social - in that communication rights must be seen as an indispensable extension of social rights.

As perceived by advocates of full democratization of communication, and by extension also of society (as the one is predicated on the other), the issue goes beyond the question of the ability of citizens to join the social discourse and contribute to the process of democratic governance, allowing "all sectors of the population to contribute to the pool of information that provides the basis for local or national decision-making and the basis for the allocation of resources in society" (White, 1984: 4). It is also seen in terms of the overall empowerment of the individual, group or society, of, precisely, their subjectivity in social, cultural and even philosophical terms. This approach

found its expression in the broad concept of the right to communicate (Fisher, Harms, 1983), later extended and reformulated into the "right to telecommunicate" (Harms, 1985), and even more so in "Solidarity's" notion of subjectivity understood as a right to mastery over one's own fate, to individual or group identity in the broadest meaning of the term, as well as to self-determination and self-government.

There are various levels of social communication, from interpersonal, through intra- and inter-group to society-wide communication. Below, we examine some basic patterns of communication in order to see whether conditions for the communication empowerment of all members of society do indeed exist at one or more of these levels.

Interpersonal and Intra-group Communication

Some discussion of the issue of communication democratization in terms of the individual perspective on the matter focuses on **face-to-face communication**, whether of the interpersonal, group or institutional variety (cf. Dervin, Clark, 1986a; 1986b). The stress here seems to be primarily on the interchangeability of sender/receiver roles as a way to ensuring the full freedom, equality and self-realization (and satisfaction of other psychological needs) of participants in communication.

Given the enormous variety of social, cultural, psychological and other factors which affect interpersonal communication, its democratization - or even the development of strategies of achieving it - present major difficulty.

Studies into the structure of the interpersonal communication process (for an overview see McQuail, 1984) have shown that in informal groups such questions as who communicates to whom and how often, who initiates communication, receives more communication from others and has a wider range of contacts, vertically and horizontally - i.e. who does or does not participate in communication on an equal footing - are decided in part by sentiments of attachment between individuals and to the group, the internal status structure of the group, agreement on norms, etc.

In **formal settings**, much of the communicative activity is structured and planned for independently of the spontaneous wishes and interests of participants. In addition, however, there are also informal channels of communication (including the grapevine) which can be selective and discriminating. Physical separation, lack of integration in a friendship chain, organizational detachment, etc. - can all exclude individuals from informal networks.

In **local communities**, social class or status is one of the major factors uniting or differentiating individuals, thereby promoting or hindering interaction and communication.

In view of all this, it will clearly be very hard to develop a programme of "democratizing" interpersonal communication, i.e. ensuring that **all** communication patterns and situations will guarantee full equality of participants and interchangeability of sender/receiver roles. The existence - even in unstructured and quite informal communication situations - of opinion leaders or "liaison individuals" shows that for a variety of reasons group members themselves ascribe a special role to some individuals, introducing some degree of inequality and making communication relationships asymmetrical. In institutional communication, teaching, chains of command, etc., a one-way flow of messages and "inequality" of participants is required by reasons of efficiency.

One promising approach to conceptualizing some of the mechanisms governing interpersonal communication seeks to identify "communication procedures" (Dervin, Clark, 1986a; 1986b), embedded in habitualized behaviour patterns of communicators and introducing inequality into interpersonal communication, thereby preventing its democratization and serving as tools of control. These procedures are seen as a reflection of wider social phenomena:

> An ideology which assumes that certain classes of humans are not eligible to attain power would procedurally relegate those individuals to non-power oriented communicating actions. The procedure, then, is outgrowth of the structure and reification of it, as well [...] the living embodiment of the structure (Dervin, Clark, 1986a: 3).

This approach serves, in part, to point up the difficulty of operationalizing the difference between the group and individual perspectives on communication democratization, or the individual and general social dimensions of the issue. For example, male dominance of unstructured and spontaneous interpersonal male-female communication replicates certain general patterns of communicative behaviour and indeed of social organization. The entire debate on the role of gender in communication (Pearson, 1985) has concerned both mass and interpersonal communication.

Perhaps one way of dealing with this problem would be to treat all face-to-face interactions (including male-female ones) as microcosmos of general patterns of communicative relations, with participants behaving in accordance with stereotyped sex roles and applying procedures learnt in the process of socialization and copied from media content, for example. Therefore, their communication behaviours can be seen as socially-determined; democratization of such interpersonal communication patterns would thus require prior changes in the general patterns of social organization and communicative behaviours.

Other major factors of communicator inequality in interpersonal and generally social communication are the knowledge gap (Donohue, Olien, Tichenor, 1987) and differences in communication competence - resulting from social stratification and tied to social position - between various individuals and groups. In these cases, too, democratization of interpersonal communication would require wider social changes. Still, there is no one, clear-cut road to democratization of interpersonal communication; nor can it be said with any certainty that this level of communication can in fact be democratized on a wider scale.

Intergroup Communication

Jay G. Blumler (1982: 623) attributes what he sees as the growing desire of social groups to engage in social communication to

> the fragmentation of what was always a rather tenuous moral, industrial and political consensus in society and a corresponding proliferation of causes and interests, each aiming to secure the best political and publicity deal it can get out the government and media powers that be. In part, it stems from the diffusion of public-relations-mindedness in previously more innocent circles, who are now determined not to be left out of the mass communication process.

To put it another way, the impetus for their efforts to reach out to other groups and to society at large usually springs from a desire to defend or promote **group interests** (which may be social, political, economic cultural, or psycho-social in nature) or project a **group identity**. In addition, it stems from the growing awareness of various local communities, groups, social movements, minorities, or segments of society from beyond the mainstream of the crucial importance of access to the media at a time when more and more of the affairs of public life are played out in media content. This is why they regard unequal access to, or inadequate presentation in, media content as a gravely prejudicial form of injustice.

In trying to break through to the ranks of subjects of communication, some groups have striven to democratize the system of society-wide communication, to pluralize and diversify mass media in general. However, in most cases this either results in failure, or - as noted above - once victorious, the groups jealously guard their status as subjects of communication. So most groups have to be content with setting up their own "alternative," "free," "community" media, using either "big" or "small" or indeed new media operating on the fringes of establishment media systems. Their functions can roughly be defined as twofold:

- to serve "intra-group" purposes, i.e. to generate group identity solidarity and organization, spread information, education etc. among members, raise awareness of group's traditions, culture, situation, interests, relations with other groups etc., mobilize members to engage in voluntary and other work to meet group's needs, etc.);
- and to serve "extra- or "inter-group", i.e. to represent a group's interests, inform population at large about its demands, aspirations, needs and problems and possible solutions, fight campaigns on behalf of the group's interests, project its identity, inform about its accomplishments, establish communication with other groups, etc.

Here, too, the question of universal access to, and participation in, communication has arisen. A great many schemes of intra- and intergroup communication were originally based on Enzensberger's concept of emancipatory media and were designed to serve the principle that content should be made by the user - only to give that up sooner or later, and opt for the principle of content being made **for** the user and **under his/her** control. Deprofessionalization of the media, one of the rallying cries of supporters of democratization, has largely given way to concepts like "controlled professionalization" (Jankowski et al., 1988). In other words, here, too, direct communicative democracy (which would turn every group member into a **sendceiver**, freely alternating between the roles of senders and receivers) has largely yielded place to a special type of representative communicative democracy.

What makes it special is the fact that alternative media have created new categories of communication participants. Assuming that alternative groups are structured and organized in a truly democratic way, all or most of their members are able to influence the operation of group-controlled media and participate in the determination of their goals; in short, they can, with some exaggeration, be called media co-managers. Moreover, a fairly large number of them is involved in the running and operation of those media, contributing time, effort and money to ensure their functioning and survival (cf. Kellner, 1985; Barlow, 1988; Downing, 1988); in short they become communication facilitators. Accordingly, we have to do here with something we might call **representative participatory communicative democracy**.

Society-wide Communication

Guided by what he calls "a considered view of political democracy and ... what public communication should be doing for it," Blumler (1982: 633) says:

> What we need as citizens most of all is ... a well-armed set of informational agents, able to act effectively on our behalf as mediators who can (1) scan the information environment for us; (2)

reduce and relate it to a coherent view of the main issues that society faces; (3) update that agenda of main issues as required; and (4) organize a coherent dialogue about how best to tackle them.

This is what might be called a traditional view of the media's role in constituting a public sphere. What is more, it may be thought inadequate, since given the socio-institutional model of broadcasting developed by the power structures in many countries with a view to perpetuating their socio-political systems, media forming the traditional public sphere certainly did not favour truly democratic communication.

At the other extreme is a strategy of democratizing societywide communication based on the assumption that given a chance virtually everyone would want to become a **mass** communicator. This signified a concept of **direct participatory communicative democracy** at the level of mass communication, so that - as Enzensberger puts it - "everyone" could become "a manipulator" of the mass media. However, when it came to proposing practical measures to put this concept of direct communicative democracy into effect, its supporters were unable to go beyond offering the vague hope that a future world information and communication order would provide "individuals and the communities they compose" with "the means for [the] exercise" of the right to communicate (Fisher, Harms, 1983: 19).

In sum, we have to conclude that democratic communication understood as a set of social circumstances in which everyone can at will be a subject of communication is more of an ideal than reality.

As Keane (1991) correctly notes, the dream of democratic communication, including the original doctrine of the liberty of the press, is based on an extrapolation from the face-to-face model of communication in the Greek polis. In other words, that it assumes that all citizens can enter public life on equal terms, that their freedom to express and publish their opinions will enable them to form themselves into a unified public body which will deliberate peacefully about matters of general concern. He makes it clear that this is unrealistic, as indeed was shown by our analysis above. This applies especially to the mass media, in that, as Keane (1991: 41) points out, differential access to the means of communication is a necessary feature of modern civil societies.

Therefore, Keane advocates replacement of the simple conception of "liberty of the press", based on the above simplified and unrealistic view of the chances of individual and groups to engage in social communication freely and on equal terms with others, with a more complex and differentiated notion of freedom of communication. The maximization of freedom of communication requires the enlargement of choices, which in turn requires both a an increase in the variety of means of communication by which different groups could communicate. It must be remembered, Keane points out, that in large-scale

societies representative mechanisms in the field of communications cannot be by-passed, so that some will necessarily communicate **on behalf of others**.

Reconstituting the Media Order in Poland

East European dissenters, despairing of chances to overthrow Communist rule, long sought to create alternative structures and areas of relative freedom within the system. They proved to be a breeding ground for human rights movements and organizations serving the defence of persecuted opponents of the system, for underground publishers and periodicals, independent educational and artistic institutions, religious and ecological movements as well as fledgling political parties. These

> independent movements sought to recreate what might be called bed-rock civil society, i.e. to undertake collective action capable, with greater or lesser success, of protecting society against the invasion of arbitrary party and state power. Equally important was the fact that these movements developed models of responsible civic attitudes which held attraction for wide segments of society (Smolar, 1991: 18).

Andrew Arato (1981) is right to say (he does so with reference to Poland, but his comments have wider relevance) that this was a project of reconstituting civil society through the re-establishment of the rule of law, an independent public sphere and freedom of association. He points out that an emancipated public sphere - which we may define as media, educational, knowledge and opinion-forming institutions whose operation is conducive to the emergence of public opinion as a political power - was more central in this nascent civil society than anywhere before. In this case, it was the most important institutional centre of civil society.

Accordingly, civil society as planned and projected in Poland under Communist rule has quite aptly been called "a communication project" (Fedorowicz, 1990). Dissenting Polish civil society could not really have an economic base of its own and was, at first at least, to have been an alternative social space unwillingly tolerated by a Communist system too weak to eliminate it.

"Solidarity's" original programme of media reform formulated in 1981 found expression in such concepts as access to the media, understood broadly enough to be almost equivalent to "the right to communicate"; socialization of the media (as a 1981 "Solidarity" policy document put it, "the media of social communication are the property of society and must serve the entire society and operate under its control"); truth; communication as empowerment; and subjectivity (meaning that individuals, groups and society as a whole should

become subjects, i.e. exercise their right to their own identity, to mastery of their own fate, to enjoy self-determination and self-government). "Solidarity" perceived democratic communication as an integral element of political democracy and an essential part of the process of democratic governance.

The strategy of building civil society was conceived in terms of a long-drawn out process of change, involving the "build[ing] up a pluralist structure in stages and gradually dismantle totalitarianism, step by step" (Kuron, 1981: 95). Under martial law, the Polish underground debated and rejected as unrealistic "big-bang" tactics of calling a general strike hopefully leading to the collapse of the Communist state. It adopted a "long march" strategy of slowly building the institutions of civil society from the ground up. Underground media constituted major building blocks of that society (Jakubowicz, 1990). The compromise worked out during the 1989 Roundtable Conference between the government (which insisted on retaining both broadcasting monopoly and unchanged institutional structures in broadcasting, preserving its control over them) and the opposition called for reinstatement of "Solidarity" and four years of its cohabitation with a Communist President, the Communist Party and a largely Communist-dominated police, armed forces and civil service. A truly free general election was to be held only in 1993, when it was assumed "Solidarity" would ascend to power. Meanwhile, "Solidarity" was hoping to be able to enlarge the borders of civil society and promote the self-organization of society within this free space, filling it with more and more democratic institutions.

Given this mindset and expectation that there was still time to develop policies for the period after full victory, it is not surprising that "Solidarity" was caught unprepared and without a plan of action when it did unexpectedly find itself in power in September 1989. Moreover, the determination to avoid falling into the trap of looking for a "Third Way" between capitalism and communism and to make a clean break with the policies and forms of social organization of the past, meant that "Solidarity's" vaguely social-democratic ideas soon gave way to an undiluted free market approach in most areas of social life. Coupled with this was a hard-nosed determination to push through the programme of reform in the face of adverse social, political and economic circumstances, even at the cost of postponing the full realization of democratic ideals.

Several parliamentary acts concerning the area of social communication were soon passed. The most important ones include the April 1990 law abolishing censorship; amendments to the 1984 Press Law passed in 1989 and 1990) and the Telecommunications Law of 1990. The Press Law regulates among others the publication of rectifications, replies and official communiques. The Press Law contains general provisions on the media access to information from public institutions, legal status of journalists. All constraints on the press have been lifted, The Telecommunications Act regulates the installation and exploitation of broadcasting equipment and was

intended to regulate the allocation of broadcasting frequencies (by the Minister of Telecommunications acting in coordination with the Minister of Culture and Arts; this is to be changed in the Broadcasting Act so that the regulatory agency, the National Broadcasting Council would both allocate frequencies and award broadcasting licences). There are same other parliamentary acts containing detailed rules pertaining to specific broadcasting activities. A detailed set of obligations connected with parliamentary and presidential elections are contained in Electoral Regulations of 1990 and 1991. The legal status of the Catholic Church in the field of broadcasting is determined by the Catholic Church Act of 1989 (giving the Church the right to obtain frequencies and broadcasting licences independently of all other applicants and on a priority basis; the Church has already received authorization to set up 17 radio stations, even though a moratorium on the allocation of frequencies for all others was introduced in June 1991).

These acts do not yet add up to the creation of a truly new media order in Poland.

Two-Track Communication Policy

In general terms, the first and successive "Solidarity" governments pursued a two-track policy of almost total deregulation in all the media except broadcasting, and continued government control over the main nationwide broadcasting organization.

True, the dissolution of "RSW Prasa-Ksiaxka-Ruch", the huge publishing conglomerate controlled by the Communist Party, was conducted partly with a view to ensure a pluralistic press by selling newspapers to specified political parties (Strzyczkowski, 1991). However, so far no mechanisms have been created to interfere in any way with the operation of market laws and concentration of capital in the press, in publishing and all the other areas of mass communication, with the exception of the film industry. There, some public funds have been committed to promoting the production and distribution of Polish films and some structures have been developed to administer those funds in the field of assisting script-writing, production, distribution and promotion of Polish films.

Broadcasting policy was most probably prompted by the government's conviction that its tough economic policy and austerity measures could provoke dissent and unrest and that it therefore needed to retain control of broadcasting in order to be able to communicate with the people. It was thus in no hurry to introduce new broadcasting legislation. When it finally did, the Mazowiecki, and later also the Olszewski, governments produced broadcasting bills which would give the government considerable authority over broadcasting in general, and over the new public broadcasting system in particular. In any case, because the protracted debate on the new broadcasting

law which was finally launched around June 1990 is not yet over, the legal status, organization and economic system of Polish Radio and Television remains unchanged.

Because of the political importance of broadcasting, parties in power seek to gain a measure of influence over television. Those in opposition do not oppose this as vehemently as could be expected, no doubt because they hope to do the same when they get into power. There is little real belief in the ideal of autonomous, impartial and politically-neutral public service broadcasting because it is quietly assumed that every government will seek to bring pressure to bear on it in any way it can. This, together with the genuine constitutional issue of the division of powers between various state and government authorities (which made it difficult to determine the composition and method of appointment of the regulatory agency which was to replace state administration in overseeing broadcasting), has delayed the adoption of a broadcasting bill.

In political terms, because Prime Ministers loyal to the President followed his wishes in appointing three of the four Presidents of Polish Radio and Television since 1989 (in two cases, this concerned the same man), PRTV is poised between the government and the President. There is direct political intervention in the running of television, especially as regards news and current affairs. This takes the form both of securing the appointment of ranking executives (like the Head of the News Department) known to support either the President or the Prime Minister, and of residual day-to-day "manual steering", with government officials influencing coverage of particular stories or making their displeasure known if news or current affairs departments dealt with issues in a way they do not accept.

The Broadcasting Bill

At the time of writing this in July 1992, a new Broadcasting Bill has been drafted by a parliamentary sub-committee on the basis of previous work in this area. Its most general goals are to demonopolize broadcasting and to create a commercial sector regulated with a fairly light touch (though specific regulations will be left to the regulatory authority to develop) and a public sector emerging out of the present government agency Polish Radio and Television.

It seeks to separate regulatory activities in the field of broadcasting and the broadcasting activity itself. The provisions of the bill vest the administrative functions in the National Broadcasting Council. The Council should consist of 9 members nominated by both chambers of the Parliament and by the President. The members of the Council shall be granted a relatively independent position. The prime aim is to make the Council immune from current political pressures. The collective structure of the body is one of the

measures taken in order to attain that goal. The President of the Republic of Poland will nominate the President of the Council. Members of political parties, civil servants, as well as persons operating as broadcasters or producers of audio-visual works can not be members of the Council. The Council is to the first administrative body in Poland situated outside the government, without direct subordination either to the Council of Ministers or to Parliament. To some extent it is an constitutional experiment, which has no precedents in the postwar history of Poland.

The most important tasks of the Council consist in allocating frequencies and granting licences to private broadcasters, in promulgating delegated legislation as well as in the supervision of the observance of broadcasting laws and licence stipulations. The scope of the delegated legislation is relatively broad. The provisions of the bill contain basic solutions in the field of advertising, sponsorship, protection of the domestic audio-visual production, promotion of the European works and the broadcasting fees. The Council is entitled to differentiate the rights and obligations of private and public broadcasters in those fields.

Licences will be granted in the administrative process organised in the form of a competition. Foreign companies and natural persons acting as sole applicants cannot apply for a broadcasting licence. Foreign capital involvement in Polish broadcasting establishments cannot exceed 33%; foreign interests may not have more than 33 per cent of the vote in the general meeting of shareholders. Furthermore the contract of partnership should stipulate that the majority of the members of supervisory board and board of directors will consist of Polish citizens. The most important grounds of the decision granting the licence are connected with the programming concept and the financial standing of the applicant. The Council is obliged to examine the ability of the applicant to produce own programmes. The negative statutory premises of the decision-making pertain to the potential threats to the interests of the national culture, state's security and the preservation of the official secrets. The licence can not be granted if the applicant would attain the monopolistic position in the media. Licences are to be granted for a period of 3 to 7 years in the case of radio station and 3 to 10 years in the case of television stations. The licence covers all relevant aspects of broadcasting activity. While granting the licence the Council can impose on the broadcaster any kind of obligation which is necessary to implement the regulations of the Broadcasting Act. The licence determines the frequency necessary to broadcast the programs. The allocation of frequencies is determined by the Council after obtaining the opinion of the Minister of Telecommunication. This means that it is relatively independent in the area of broadcasting frequency management and allocation.

The Council is entitled to supervise the activities of all broadcasts as far as the correspondence with the general regulations and the provisions of the broadcaster's licence is concerned. Grave infringements of basic obligations

may result in penalty, from fines and up to and including revocation of the licence.

Private broadcasters can defend their programming independence with usual means of legal appeal. The imposition of any kind of obligation or prohibition on the broadcaster may take place only on the basis of a clear statutory authorisation.

According to the Broadcasting Bill, Polish Radio and Television is to be split up into two wholly state-owned national companies, Polish Radio, Ltd., and Polish Television Ltd. (acting directly on the statutory basis, without the need for a licence) to be run by Boards of Directors (appointed by the National Broadcasting Council) overseeing the Board of Management (appointed by the Board of Directors), with a Programming Council (appointed by the Board of Directors) acting in an advisory capacity. Public broadcasters function in the form of joint stock companies. All stocks belong to the State, represented by the Minister of Industry and Trade. Due to several stipulations of the Act the execution of the ownership rights of the State does not permit interference into the day-to-day operation of public radio and television (most powers are vested in the Board of Directors) nor exert any influence on the programming policy of the broadcasting company.

Regional stations of Polish Radio are to be turned into separate regional public stations, also as wholly state-owned companies. Regional stations of Polish Television are to be turned into local subsidiaries of Polish Television, Ltd., with the possibility that they can be privatized later.

The programming obligations of public radio and television are to be regulated in detail by the Act. Those special obligations pertain to the fair presentation of the whole diversity of facts and events, to the free formation of opinions as well as to the presentation of diverse attitudes and programmes, execution of public control, development of culture, science and education. Special obligations are connected with the presentation of the policies of the State. The political parties have the right to present their position in the crucial problems of the country.

The Act regulates the problems of the diffusion of programmes in cable networks. The simultaneous retransmission of complete and unchanged programmes for reception by the general public is subject to notification. The notifications are registered by the Office of the National Broadcasting Council. The Act protects the freedom of retransmission of programme services that comply with the law of the country of its initial transmission.

What New Media Order?

From what has been said so far, it seems clear that for the time being the Polish media look set to develop along fairly classical Western lines. On the one hand, there will be public broadcasting and some forms of state intervention in

other cultural industries, rather limited in comparison with those developed in some other countries (cf. Rouet, Dupin, 1991). On the other, there will be a largely unregulated private sector encompassing all the other media.

This media order, which will likely be remodelled after practical experience demonstrates its shortcomings and weaknesses, will not be highly conducive to democratic communication. Even if we accept that in a modern, developed mass society recreation of the Greek polis is hardly possible, and that therefore some have to speak on behalf of others (creating, at best, conditions for what might be called representative communicative democracy) - we have to ask with John Keane (1991: 45) how "to render media representatives [journalists, broadcasters, etc. - K.J.] accountable to their reading and listening publics".

There is little hope in Poland today that a way can be found to ensure this accountability, and little patience for the forms of direct social access, participation and management of the media which were once considered necessary to ensure accountability and indeed direct representativity of the media vis-a-vis society. Rather, conditions are set for the operation of largely undiluted market forces which promote concentration of capital raising costs of entry into the public sphere with media capable of reaching sizable segments of society, and domination of advertising-funded media which tend to edge out non-commercial opinions and to give priority to corporate speech. Communications markets, Keane correctly points out, restrict freedom of communication by generating barriers to entry, monopoly and restrictions upon choice: they give large corporations the power to organize and determine and therefore to censor individuals' choices what they listen to, watch and read.

There is also still a strong desire on the part of successive governments to bring influence to bear on whatever media they can affect, and to tighten control of the media directly subordinate to the government, including the Polish Press Agency, the Polish Information Agency and Polish Radio and Television.

As for the public sector of broadcasting, the newly reconstituted Polish Radio and Polish Television will likely operate very much in the mode of large traditional public service broadcasting organizations known from Western countries. Paddy Scannel (1989) argues that public service broadcasting has a "fundamentally democratic trust" because it brings public life into private life. By placing political, religious, civic, cultural events and entertainments in common domain it has equalized public life in a way that has never before been possible, making it accessible to all. This is because, as he claims, the many voices that speak in this domain, the broadcasters themselves, public persons and private people, amount a universe of discourse, to a complete world.

Scannel admits, however, that public service broadcasting distributes communicative entitlements (including the right to speak freely which, as noted above, is a fundamental prerequisite of communicative democracy)

unevenly, and that in this system of representative communicative democracy power accrues to the representatives, not to those whom they represent.

This, of course, is a fundamental issue in every area of social organization, from politics to broadcasting. No fully satisfactory answer has yet been found to questions formulated in this regard by John Keane (1991: 45)

> should [media] representatives say and do what their constituents want? Are representatives obliged to act as if their citizens were acting for themselves. Or should representatives say and do what they consider best for their constituents? Are representatives only genuine representatives insofar as they interpret opinions, make judgements and act independently of their citizens?

Scannel joins the predominant trend in thinking on ways of democratizing communication by arguing for more participatory forms of broadcasting allowing more people to play an active part in public life. He is thus in favour of public access and participation in programmes, programming and programme making in decentralized radio and television services, complementing and enhancing the nationwide system of public service broadcasting.

This is somewhat in line with John Keane's concept of new public service media forming part of modern democratic society based on the institutional division of state and civil society, involving the building of a pluralistic, self-organizing civil society which is coordinated and guarantied by multilayered state institutions which are in turn held permanently accountable to civil society by mechanisms - political parties, legislatures, communications media - which keep open the channels between state and social institutions. In this modern democracy, Keane argues, there should be a pluriformity of decentralized and localized public service media, in part financed from public funds, serving the expression of the full range of opinions, tastes and forms of life, and empowering the plurality of citizens.

How realistic this goal is in Western societies remains to be seen. In any case, based on the foreign, we may say that the three basic conditions for a realistic model of communication to be created are:

(i) general accessibility to information;
(ii) safeguarding the satisfaction of communication needs inherent in the exercise of full citizenship, and universal entry for all groups in society into the public sphere, while also guaranteeing its independence;
(iii) an "even match" between the state and civil society.

In Poland, calls for measures to support the creation of a "civic sector" of broadcasting (Jakubowicz, 1991), i.e. non-commercial private stations

speaking to and on behalf of various political and social orientations, minorities and communities (which would approximate the public service media from Keane's schema) have so far fallen on deaf ears. The same is true of the situation in the print media, where there are no policies designed to safeguard entry into the public sphere for small and minority groups. The irony of the situation is that while the Polish revolution started with a process of self-organization of society with a view of creating a civil society with a strong media and communication component, there is now little concern for the development of policies which would favour continuation and development of this process. Instead, we may see in Poland a repetition of the process which in the West led to a situation in which

> [the public sphere] was destroyed historically by the very forces that had brought it into existence. The development of the capitalist economy in the direction of monopoly capitalism led to an uneven distribution of wealth, to rising entry costs to the Public Sphere and thus to unequal access to and control over that sphere ... In addition, the growth of the state's role as a co-ordinator and infrastructural provider for monopoly capitalism led to the massive development of state power ... Thus the space between civil society and the state which had been opened up by the creation of the Public Sphere was squeezed shut between these two increasingly collaborative behemoths (Garnham, 1986: 41).

The same situation prevails in most other post-Communist societies where, as Slavko Splichal (1991) has noted, rebirth of the civil society is blocked. It is to be hoped that when consequences of the unchecked operation of market forces in the field of mass communications are recognized, the approach of societies and governments to mass communication will change and a more realistic attitude will be adopted with a view to creating conditions for democratic communication.

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From Perestroika and Glasnost to Independent Media? A Russian Perspective

Yassen Zassoursky

Russian media in the nineties are confronted by new problems which are resulting from transition to market economy. The new press law adopted by the Supreme Soviet of the former Soviet Union in 1990 and the press law of Russia adopted in 1991 marked a dramatic change in the development of Russian media. A free press was established in Russia in 1917, and in 1918 it was suspended by Lenin's decree "until the time was right", which evidently required 72 years to happen.

Since the beginning of the perestroika and glasnost process in 1985 there has been de facto press freedom, but now it has a legal basis. We have a wide range of papers, from monarchist to anarchist. And there is a real political and cultural pluralism in the print media. Still even with the arrival of political freedom there appeared new problems of economic survival and state monopoly in printing, newsprint production and distribution. The effects of the liberalization of prices were acutely felt by print media in 1992. The prices of newsprint, printing and distribution sky-rocketed and this caused severe economic problems for most of the newspapers and magazines which had to increase their prices and to cut their circulations in order to survive economically. Some newspapers had to stop their publication temporarily as the Pravda did; the Ogonyok magazine had to change from weekly to biweekly. The advertisements were not yielding sufficient revenue to cover the cost of production. The very survival of daily press is at stake.

At this stage the government decided to support media financially. Depending on their circulation, newspapers and magazines received state subsidies through the Ministry of Information and Press, which stressed that no political restraints were attached to financial assistance. Still this created a new situation in the government-press relations. And the problem of the autonomy of the media has become crucial in their relations with the state. Another and more technical problem is a great lack of economic competence in newspaper management. Having achieved political freedom our press has still a long way to go to achieve its economic freedom.

The situation in broadcasting is much less pluralistic. National television and radio are state owned, and state controlled. There are very few and mostly local radio stations which do not belong to the state. One of them is the Echo of Moscow radio, founded by the Faculty of Jougnalism of the Moscow University, the Ogonyok magazine, the Radio Association, and the Moscow City Council. It is really independent of the state. It was the only radio station that was covering the Vilnyus tragedy on 13. January 1991 and it played an outstanding role in defeating the August 1991 coup.

The law on the audio-visual media is still under the consideration of the Supreme Soviet - the parliament of the Russian Federation and will not be passed until the end of 1992.

The relationship of the media with the state remains extremely controversial, especially in television an radio broadcasting. The government and the parliament of Russia are often trying to pressure both channels of television to avoid their criticism. The head of the Ostankino television Yegor Yakovlev expressed his opposition to attempts to make journalists subservient to the authorities in power, emphatically rejecting the concept "those who pay the money order the tune" as unacceptable to newly emerging Russian media.

On my part I wrote an article on the role of the media in the August coup for the Izvestiya (published in September 1991) in which I suggested to introduce a special law forbidding interference of the state (the President, the prime-minister, ministers, the parliament, local authorities) into mass media. It also is meant to ensure that any financial backing or support by the state of the media should be given under guarantees of keeping media independent of any attempts to influence either management or contents of the media, making them really independent and autonomous.

Besides the law on the audio-visual media which is still under consideration in the parliament there are two more areas of public interest and media concern which remain without due legal support - the right to information and the glasnost principle of openness in the activities of governmental, political and other structures. There are drafts of both laws but they are not even taken up by the parliament for consideration. Therefore guarantees for journalists to get information and gain access to important decision making events are still very shaky and often depend on personal decisions of various officials.

At the same time there is a new and important factor in the media activities which might endanger their freedom as advertising and sponsorship of economic structures have become a major component of economic support for the media. And it is essential to defend the media from pressures of these powers on the contents and orientation of the media. The new model of the Russian media would require safeguards against interference of the state and economic structures to make press, television, radio and other information activities a really autonomous area of activities.

The autonomy of the mass media is becoming still more important in the nineties of the 20th century and in the 21st century due to the increasing and growing role of information, access to information and its delivery in the process of media globalization in the context of the post Cold War realities.

A most important role is being played by new technologies in the information process. In the former Soviet Union during the August coup it was new information technology that is not so widely available, but still played a crucial role in filling the information vacuum in the face of suppression of most newspapers and the imposition of controls over the audio-visual. It was fax and xerox machines that delivered and distributed uncensored information throughout the country and contributed decisively, together with such unique radio stations as the Echo of Moscow to the defeat of the coup.

The information and media dimension is now a major area of interest and past of the Helsinki process. The evolution of the CSCE into a Euro-Asian complex with North American partners adds a global dimension to its activities. After the end of the Cold War and the disintegration of the Soviet Union and Yugoslavia there are new accents in the CSCE activities and most of all concern for peacekeeping and solving ethnic conflicts. In 1975 the Helsinki conference made a major contribution in abolishing international tensions in Europe, still threatened by nuclear holocaust, by accepting among other principles the principle of safeguarding existing frontiers between the CSCE countries. Now it is important to ensure that no more Bosnia type conflicts would occur in Europe so that for example Scotsmen and Bavarians would satisfy their special aspirations, if they so wish, without endangering national and international security and well-being or individual human rights.

A major role in the renewed CSCE might and should be played by independent and autonomous global media thus we need new approaches to international communication to which each and every member state might contribute through its media system linked to European values of human rights and free, independent and autonomous press, television, radio, news agencies and computer networks. The CSCE needs a globalized system of information and media access to fulfil its duties in a world which is almost free of dangers of the nuclear war, but is threatened by ecological and ethnic disasters. The CSCE needs care, and information and communication improvements may and should become an important medicine for peace and international understanding to create really friendly and safe skies over the CSCE information space.

Russia: Is Law on the Press Still Pressed by "Sandwich Law"?

Yuri Baturin and Yegor Kouznetsov

The food supply in Russia keeps deteriorating, but the rule stating that a buttered slice of bread falls on the buttered side remains true.

The experience of the Law on the Press proves this: a democratically designed legal act turns into something very undemocratic in the process of its application and generates more problems than it is able to solve.

Let's look back to August the 1st 1990: the day the Soviet Law on the Press went into effect was the day to see censorship go away. But Glavlit (censorship) Agency managed to survive. It was transformed into the General Authority on Secrets Protection. The former Glavlit was kind enough to propose that mass media should make a contract with them. Glavlit dealt with its own list of state secrets and did not forbid or permit publication, but just whispered its opinion into editor's ear.

Now under new Russian Law on the Press Glavlit is not permitted but there was established State Inspection on Freedom of the Press Protection. It's a mystical thing, but staff of almost all of local bodies of the State Inspection is the staff of former Glavlit. You may rest assured that they have a good experience of protection of Freedom of the Press.

Second example. The Presidential decree of the February 1992 orders to prepare a draft law on the Journalist's Status. But journalist's status and his/her rights are already described democratically in the Law on the Press. So what does this new would-be law mean? We suppose only restrictions and limitations.

Fortunately, Russian law is not the main actor in our political stage. Let's take some more examples.

The Russian Law on the Press was adopted in last December. But President Yeltsin signed it only this February. There was a period when Russia had no press law at all, because former Soviet press law was abrogated. But nobody noticed it.

Still another example. During the June siege of Ostankino television studio in Moscow, its management agreed to negotiate with the opposition in the long

run. The manner of the talks was the following: the opposition states its demands, the "Ostankino" managers try to object in this or that way. When we explained to the opposition chieftains that their demands (no matter justful or not) should be addressed either to some other officials (in compliance with Russian law on mass media) or could be settled by other means without any rallies and other political actions, they were really surprised. But the most peculiar thing was that "Ostankino", boasting an army of qualified legal advisers, had failed to come to such simple answers. All this proves the grim fact that in Russia law still is not much of a value.

Lawyers in Western Europe are used to the fact that "rule of law" constraints and holds accountable all elected bodies. Individual power is restrained by law and competition and public opinion. Every branch of government is held in checks and balances by the Constitution. When they speak of the "rule of law", they mean not only procedural guarantees that provide specific consequences flowing from violation of well-established laws; one also speaks of human values. To follow the rules is not enough.

The Russians have historically seen the role of law in society as that of a parent and a teacher. Rights are granted rather than "inalienably" held.

To great surprise even such liberal official like Michael Fedotov (then Deputy Minister of the Press) said at one of the press-conferences: "Russian press law is a teacher". But in pedagogical terms law is much better than bureaucracy. We deal with journalistic practice in our television and newspapers. And we know that there is a lot of "telephone justice": high-ranking officials phone and try to pressure the media.

Taboos still exist. A graphic example is the coverage of Michail Gorbachev, former Soviet President (founding father of Glasnost). No matter what the topic is: international conference at the foundation which he heads, his meeting with, say, Henry Kissinger - all this practically doesn't find its way into the press because of stringent reaction to such information by the authorities. An editor can be punished for publishing investigative or just critical article or transmitting a programme critical of the authorities.

Pressure on the mass media is growing and has reached its peak by the middle of 1992. It was graphically shown by the Russian Federation Parliament Decree on the "Izvestia" daily newspaper. The Supreme Soviet decided to deprive the paper of its publishing house and printing shop. It was decided that "Izvestia" should work under the auspices of the Parliament. Democratic principle of power separation was violated. In other words, disputed questions were settled not in court, but in parliament hall (nearly empty) and with documented violations of the voting procedure.

Another, more general example. Decree, initially called "On State Policy in Relation to Mass Media" faced strong resistance because of its undemocratic nature. After that it was renamed "On Economic and Legal support of Mass Media". But the nature of the decree changed little. A law with another peculiar name is expected to be worked out: "On the Organisation of activities

in the Field of Radio and Television". This law will limit the ability of radio and television to cover events and make electronic press accountable to the special parliamentary bodies.

Besides this we witness the emerge of draft law on "Rights and Duties of a Journalist", mentioned above. The law was put forward by the Ministry of the Press and Information as an answer to the draconian decree of the Supreme Soviet. But it's a weak move. In its good time, when the parliament ordered to work out such a decree, it was quietly abandoned, because it had no subject. Russian law on Mass Media already lists such rights and duties. To create a new law based on the few articles of the old one means to invent new limitations for the journalists, because any law (as any rule) means restriction.

There are also disagreements between the republics of the former Soviet Union in relation to TV programmes beamed beyond the territories of the republics. Not only, say, from Russia to Ukraine and Moldova, but for example, from Uzbekistan to Tadjikistan. Such examples show that common information space of the Soviet Union is split and will fall apart in near future if there is no universal treaty within CIS framework on the freedom of information and information exchange.

Freedom of the press is the best way to test system's stability. If there is resistance to this freedom, then the authority doesn't feel very assured. The relations between the authorities and the press are very delicate. Rules of the game are being worked out for decades. The Parliamentary Assembly of the Council of Europe (which Russia applied for and therefore promised to comply with its decrees), adopted in 1984 a recommendation on relations between national parliaments and media. Regretfully, Russian Supreme Soviet exceeds the margins laid down by that act. In 1991 the Parliamentary Assembly, taking into account changes in Eastern Europe, adopted another document: "On parliamentary responsibility for the democratic reform of broadcasting", warning against typical mistakes being made now by Russian authorities.

Regretfully, we can see political manoeuvering behind the latest events in which mass media is bound to be a loser. There will be either "saviours" of the press on whom it will be dependable, or an "enemy image" will be created that will come handy at the hard times for the authorities. Anyway, hard times are in store for the press.

This leaves the Council of Europe and other bodies with a unique historic opportunity to continue to call for civilized and responsible standards by and in Russia.

The press is an effective instrument of power, any government strives to control it. But democracy makes it possible for the press to enjoy political freedom. Our country experienced that during the process for adoption of first Union and then Russian Laws on Mass Media. But Russia has one peculiarity: we are also changing the economic system. Economy was influenced by the press more than any other sphere of public life. Now it backfires adequately, putting mass media into disastrous situation.

What's happening, actually? When it comes to sharing economic benefits, our political system knows what to do, or at least says so. When you have to share losses, political system is idling. And the sharing of losses is the key to economic problem. Each interest group seeks governments' protection and wants it to make other groups act in common interest. Paper manufacturers want prices to grow, paper consumers want the prices to go down. Each group has its economic interests and tries to squeeze out the right decision. That's normal when you have an unbiased referee. In Russia only press can be one. It gives fuller and more precise picture then one gets looking from an office, limousine or kitchen window. Difficult problems become such, not because they are difficult but mostly because they cannot be solved without negative side effects. That's why authorities have to adjust the situation and the last decrees of President Yeltsins office and the Parliament do so economically. But the very trend to divide the press into categories depending on circulation and orientation means shaping it to fit government interests.

The Role of Audience in the Present-day Media Situation: the Case of Estonia.

Halliki Harro

When "perestroika" started in the USSR, one Estonian Weekly published a cartoon depicting a huge ship named "Perestroika" that was following a little newspaper-boat through thick ice. This was a good illustration of the rapid rise of social impact and status of journalism at that time. Mass media received enormous public attention and despite the decline of the good image of mass media, "journalism" is still a topic of a day.

In Estonia, censorship almost entirely waned in 1988-1989 and then it appeared that absolutely no regulations exist for the media any more. In 1989 discussion over media law started and came to its peak in 1991 when the most recent draft of media law was discussed, but still not adopted. (One reason for that was unclarity regarding the Constitution.) Ownership problems, journalism ethics and the status of television and radio were other crucial topics in this debate. But although the rapidly changing media scene became an issue in the general political debate, the rights and the role of audience in the mass media have never been in the centre of discussion.

People's rights were mentioned when the question had to be decided to whom Estonian broadcasting should belong and whose interests it should represent, but this was more an inner debate and did not cause larger explications concerning the position of audience in our present media situation.

Citizens are taken today mostly as consumers of the mass media. Like public speakers need tribune and advertising needs audience, the media considers the readers, listeners and viewers nothing more than recipients of their messages. Media regulation, the role and responsibilities of journalists and their rights and duties are mainly discussed in professional circles of politicians and among experts. Publicity is very seldom involved. Unfortunately even our lawyers are not eager to co-operate with journalists in the complex and difficult process of drafting a legislation for the press and for broadcasting. At the same time, the political and economical development of the country have been considerable. Estonia adopted a new Constitution and launched its own currency in the summer 1992, had free elections of

Parliament and President in early autumn 1992 and is exercising a wide scale privatisation programme. The development in media situation lags behind.

Somehow the present situation in Estonia is similar to the situation at the end of twenties and the beginning of thirties. At that time journalists started to identify themselves and their role within the society as a whole. The right of the people to know was not an item in Estonia at this time.

Estonian people are - like in the past - not explicitly informed about their information and communication rights. The isolation from the global media debate and the lack of resources to provide information carriers produced a lack of knowledge which has had far reaching consequences for the social as well as for the political life.

The language barrier promoted this isolation, in particular concerning the broad masses. A small nation needs more than just the mother tongue, but all other languages are not equal as far as their role as a carrier of abstract social knowledge is concerned. Even though Estonia represents a relatively high level of knowledge in foreign languages among the republics of the ex-USSR, the structure of language skills is not adequate for a small nation. Before World War II the second and third languages were German and English. Nowadays they are Russian and Finnish, and on much lower level of proficiency. According to my experience as an university lecturer, an "average" Estonian could follow the text of movies, entertainment programs and daily news in two foreign languages. However, commentaries and other kind of more sophisticated information remain poorly understood.

Estonian people just do not know much about their information and communication rights, and furthermore they have no experience with Article 19 of the Human Rights Declaration or the European Convention on Human Rights.

For example, our present mass media is absolutely free to divulge information. But there are no legal guarantees to receive it. Nor is there a legal right for powerholders and bureaucrats to hold information, but one should remember that "state secrecy" existed like a kind of common law nearly 50 years.

Journalists would need a legal right to have access to official records, although exercising that right might cause a lot of distress. Our society is full of secrets which have roots in our recent history. Only those who have been born in the 1970s can not be found more or less "guilty" for being linked to the ideologies and institutions of the past. If a "right to have access to information" will be adopted, it remains unclear for the moment whether journalists will use this right in a responsible way. There are only few Estonian experiences with objective and balanced reporting in the sense of responsible investigative journalism.

On the other hand, the problem is not only that people might hesitate to use their right, much more realistic is that they do not know how and when and which records are public. It is very easy for powerholders to tell citizens that

document X concerns a "national defence secrecy" and that the record Y is only a draft and that Z belongs to the "business secret sphere".

The lack of knowledge is linked also with another problem I would call "acquired cultural immunodeficiency syndrome - AcIDS".

The newly democratic countries are particularly vulnerable to the diffusion of Western mass culture. Because citizens were so long denied access to Western mass media many people have no experience of their critical evaluation.

Presently it would be premature to conduct surveys on the structural and functional changes in still rapidly changing Estonian press, but there is relevant preliminary information available on TV. Thus, earlier our people had access to Estonian TV and Moscow (and partly to Leningrad). In addition, the northern part of Estonia, including the capital Tallinn, had access to the Finnish TV channels. Recently, however, political and technical advances have made satellite TV increasingly popular, especially in southern and western Estonia where Finnish TV is not available.

Estonian Market and Opinion Research Centre EMOR, Ltd. has made several surveys (not published) about the watching of different mass media channels. What concerns satellite-TV, we can trace the steady growth of its viewers through the years 1990-1992. According to the survey made in March 1991 and February 1992 of the inhabitants of Estonia 18% and 22%, respectively, have access to satellite TV channels at home. (Note that the receiving equipment is still quite expensive.) The following table shows how frequently do these people watch satellite-TV channels:

	June 1990	March 1991	February 1992
almost every day	2	11	16
3-4 days a week	1	2	2
1-2 days a week	1	3	3
more rarely	3	6	1
not at all	86	68	12
impossible to watch	*	*	53

* there was not such a question in a survey.

One should notice that the majority of those who have access to satellite TV channels (22%) watch it almost every day (16%). Especially big is the everyday audience in small towns (43%) and villages (31%). In Tallinn 72 % of TV viewers watch Finnish TV continuously.

What channels do people watch?

In April 1991 the top 10 channels were: MTV 43%, Eurosport 42%; RTL-plus 42%; Filmnet 37%; Pro-7 26%; Superchannel 11%; Screensport 11%; SAT 1 10%; Sky 1 9%; CNN News 5%.

In February 1992: RTL-plus 70%; Pro-7 46%; Eurosport 41%; MTV 38%; Sky One 19%; SAT 1 18%; Screensport 12%; Superchannel 9%; The Children's Channel 9%.

The free choice of channels is limited by two factors mainly: the strength of a signal from satellite and collective wish. Only 5 % of satellite TV viewers in April 1991 and 4 % of viewers in February 1992 have their private equipment. So the taste of majority is determining.

At the same time there is noticeable decline of watching Estonian TV: 1990 an average viewing time was 2,7 hours, 1991 it was 2,1 hours, and 1992 it had dropped to 1,7 hours.

From this data it can be concluded that Estonian people are quite open to Western media. Films have first priority but news programmes are also quite popular. It`s obvious that these programmes are carrying information about Western life-style and promotte adoption to it. Nevertheless the thorny question remains how much people do understand what they are watching. What is the influence of "Dallas" and "Dynasty" in an economic, social and cultural environment which is absolutely different from that in the United States of America? By watching TV movies and soap operas, people with "AcIDS" run the risk of losing their ability to get the real information they need to become well informed members of a democratic society. After all, information and communication are prerequisites for active participation in the political, economic, cultural and social life.

Definitely one cannot resist a free flow of Western media into Eastern Europe. On the contrary, I think that any kind of direct or indirect restrictions would be wrong remedy to construct an "immune-system" - against "AcIDS". I do have nothing against soap-operas or "Tutti-Frutti". If people want to watch them, they should have a right to do so. But these kind of programmes have to be countered by informationall, cultural and educational programmes. If there is a balance in the programmes, the system would work. But if this balance is missing, if cheap and "low quality" serials dominate the TV programmes in general and people have no alternatives - and this could become a reality in Estonia soon - this could be dangerous for the intellectual and cultural life and at least also for the new (and still weak) democratic institutions. "AcIDS" could undermine the well-being of society.

Eastern societies, untrained to deal with diversity of opinions and "hungry" for things they have missed over many years (every eve entertainment, detective stories, erotic movies, etc.) are more vulnerable in this respect than Western societies which have learnt to live with this "pluralistic" media environment.

In developed western societies all kinds of consumer-defending organizations exist, also in the field in radio and television. Eastern consumers

have no experiences with satisfactory consumption. In the past they more or less had no choice. There were less goods, less services and less information available to make choices. To teach people "how to consume" seems to be a needed effort. This is also valid for media consumption. Eastern societies (and probably Western societies as well) would need a system to protect the mass media consumer, a system to teach him/her to consume various media channels critically.

Regardless of these largely theoretical observations, constructions that are generally recognized among Estonian people, the practical decision made by e.g. Estonian Television are mainly determined by the shortage of financial resources. Good and high quality programmes are mainly expensive, too expensive for a small country like Estonia with 1,6 million inhabitants.

All Estonian media are struggling with serious financial problems. It would be naive to hope that local messages will some day appear in a very attractive form to counterbalance the foreign influence. On the contrary, the danger is very real that Estonians will get more images from abroad than from their own country. The global problem of economical inequality creating unbalanced flow of information between cultures has escalated now within Europe. Michell Stephens writes in his book "From Drum to Satellite": "We are loosing news of our neighbourhoods. And to the extent that the exchange of news helps bind neighbourhoods, we risk loosing those neighbourhoods and our identity as participants in them."

Hence I think that national media is a burning topic in our society if our society declares that it accepts the idea of "citizens`s right to know". Estonian TV has accepted the concept of "public service". But what is really at stake is the identity of the Estonian people, an identity for which the full rights have just been won after a long period of foreign domination. Now the friendliness of European TV program distribution politics could help.

One Step Forward and Two Steps Back? The Romanian Broadcasting Law

Cristian Constantinescu

Among all the communist regimes of Eastern Europe the one in Romania was not only totalitarian but it also had a feudal character having in a way something in common with the megalomania of North Korea.

In December 1989 immediately after the revolution people were happy because they gained some basic freedoms.

They could express their opinions without fear after so many years, they could not only travel freely inside the country, but also abroad. Before 1989 it was possible only for a few privileged category of people to have a passport in Romania. So the Romanians could see the world around them for the first time. They could associate and set up businesses.

Although such freedoms didn't mean very much for those living in the neighbouring communist countries during the eighties, as some of such limited rights have never been taken away from them, for the Romanians they were just "fantastic".

The hopes people had on December 22, but also the lack of objective information and the inexperienced and unclarified new political parties have mainly contributed to the large vote in favour of the National Salvation Front on May 20, 1990. The N.S.F. in fact took power on December 22nd 1989.

Once legally in power the conservative elements gained more and more control within the National Salvation Front, thus building up again some of the old structures under new names or just maintaining the old bureaucracy reluctant to change and to give people more freedom.

However the printed press increased immediately from 4 identical, nationwide daily papers to some 1500 both nationwide and local daily and weekly newspapers and periodicals. New independent radio stations started to broadcast too (most of them 24 hrs/day). There are now 12 new radio stations, out of which 6 are in Bucharest.

But the greatest impact on the public has had the state public television.

Until December '89 the Romanian television's broadcast time was restricted to only 2 hours daily on one of its two channels. People used to call

the 2 hour program that lasted from 8-10 p.m. a "sandwich program". The programs usually consisted of two speeches of The Great Leader. Between the speeches there was a half an hour entertainment program... Consisting of songs and poems about The Leader and His Wife.

From December 22nd 1989 the Romanian television started to broadcast an average of 21 hrs of program per day on its two channels. Although the programs are not to be compared with what they used to be, their informative character come under passionate criticism for being neither impartial nor objective. The problem is that whereas the printed press and even radio may offer a diversity of information and opinions, in the TV area there is the monopoly of information held by the Romanian television.

Therefore the fostering of independent, pluralist and free television broadcasts is essential to the setting-up, development and maintenance of democracy in Romania.

The terms for such a trend already exist in Romania. There are now 14 local TV stations with private and public status. Unfortunately those stations are inadequately equipped and because they do not have yet their own transmitters, they have to broadcast in the early afternoon hours or long after midnight on the channels of the Romanian television (RTV) when it is not broadcasting.

The help (both on equipment and training) received from the International Media Fund in Washington and the Soros Foundation (United States) should be mentioned. Any help from other organizations in Europe is very welcome.

Therefore if the printed matter has reached a diversity, in TV area there is still one voice, in other words the monopoly of the Romanian television.

The occurrence of the opportunity for new freedoms to emerge does not necessarily mean that the old problems were solved.

1. The people of the establishment (government, parliament, precidency, supreme court and most of the journalists) are marked by the former communist propaganda. The worst thing is that there are no educators who are deeply democratic in their ideas on freedom and democracy.

Even the opposition and the so called "independent" media, in response to the pro-government attacks, promotes an opinion press, which is not objective either, loosing credibility among the public and thus, by helping the government, to keep control over the situation. This means that the same people are maintained in office inside the establishment.

As regards RTV many consider (when watching its informative program) that it is under a total control by the government and particularly by the president of Romania. This is a fact that cannot be denied, especially the influence exercised by the president and his close circle. The fact is that some journalists working in TV are on their side and defend the point of views of

those institutions. When speaking about these TV workers one must mention that they represent the conservative ideas and old structures that still operate in RTV. The conservative wing tries at the same time not only to defend what belongs to the past structures and ideas, but they also fight for their positions they are afraid to loose.

On the other side there is a category of journalists that really lack professionalism. Having freedoms they do not know how to use, everything they do fits into the old patterns. As they are not able to change their way of thinking, they can't adapt themselves to the new situations.

On their part there is a lack of desire to learn how to approach the different situations they are faced with. So they dress new facts in old clothes, thus siding with the conservatives.

It must be mentioned here that there are young journalists working in different TV departments who really try to bring a new spirit in the way they present their materials. The most important thing is that they have the courage to tackle all those problems that trouble the Romanian society. They try to present the reality as it is, to inform the public correctly.

2. Disinformation was of great importance to the power during the communist regime. It was a way to manipulate people, to turn away their ideas and thinking from the main issues of the society. Disinformation was an art highly developed by the Communist Party and its tool - the Securitate.

As the whole media was under their strict control, people working in printed press, radio and TV were trained to this art. Many of these people are still in their positions acting the same way they did for so many years before.

So, they can be easily manipulated by different interests. Many of those who did such things earlier are practicing the art of disinformation now too, having a free hand, using the freedoms given after 1989.

Here again we find those who hold the power, those who are afraid that a radical change may sweep them away.

As it was mentioned above, lack of professionalism has an important role to play. Very often pieces of information which are not checked reach the public - thus leading to disinformation.

Disinformation is also very dangerously used for nationalistic and xenofobic purposes. So disinformation is used by the conservatives as well as the extremists.

3. New freedoms and old problems are more obvious if we look at the Romanian Broadcasting Law which has already been adopted by the Romanian parliament and now waits to be promulgated by the president of Romania in a matter of few days. The promulgation of this law by the president can be considered as the starting point of its implementation.

This is the first time in Romania that such an important field in the media is regulated by a law and in comparison with the other former communist countries in Eastern Europe the regulation has a global and comprehensive approach.

Depending on its implementation the law may bring a totally new configuration of broadcasting in Romania:

- Partial abolition of monopoly and censorship and a large opening to free enterprise;
- Transformation of the old national broadcasting system from a government and presidential agency to a public corporation;
- Parties or other political organizations and public authorities will not be granted a broadcasting license;
- To prevent broadcasting ownership concentration a person or a judicial entity, public or private, can be an investor or a shareholder with a majority of shares, direct or indirect, only at one audio-visual communication society, and cannot hold more than 20% of another company's capital.
- The shares of a broadcasting company can be only nominative;
- Private broadcasting companies have to be Romanian commercial judicial entities even with full foreign capital;
- Criteria for granting a broadcasting license must ensure pluralism of opinions, an equal treatment for all participants, quality and diversity of programs, fair competitive conditions for all participants, promotion of the national a-v product and of the national culture, the independence and objectivity of programs broadcasted by public judicial entities.

However there are some serious limitations to the freedoms of broadcasting:

- The first article of the law underlines that "free expression of ideas and opinions as well as free communication of information by means of radio and tv are guaranteed by the law, in the spirit of constitutional rights and freedoms, public and private audio-visual means are obliged to ensure accurate information of the public opinion. Any form of censorship is forbidden".

This may give every reason to believe that the broadcasters would benefit from the democratic freedoms that they need. But if we go further to the second article of the law we find that:

- "Defamation of the country and of the nation, incitement to war, to national, racial, class or religious hatred, incitement to discrimination and territorial separatism, to public violence, as well as obscene attitudes contrary to good morals are forbidden by law".

The first question that may arise is how and who is going to define what "defamation of the country and of the nation" is or "incitement to war..." etc. Secondary this is nothing but a terrible confusion between such events taking

place and the right of the broadcaster to inform the public about them. And to make everything wholly unacceptable article 39 of the law stipulates that:

- "If provisions of art.2 are being violated by programming and broadcasting of products, punishment is provided for by penal law, increased by 2 years". No comments!
- Another important issue is the regulatory body which by its constitution should be impartial. But how can it be impartial when 9 out of 11 members are nominated by government, presidency and those members of the parliament that belong to the political party in power.
- One of the main deficiency of the law is that it maintains the monopoly of the ministry of communications on spectrum and frequency allocations. Only the ministry may grant a frequency to a broadcaster through the so called "technical authorisation".
- The public nationwide broadcasters are obliged (art.9 of the law) to broadcast communiques or messages of public interest coming from the parliament, the presidency or government.
- The word "obliged" gives a clear idea that the respective authorities have the right to decide what is of "public interest".
- The whole law pays no attention to the public wishes and opinions. The broadcasters have to comply with lots of responsibilities towards the ministry of communications and the national audio-visual council but none towards those receiving the signal and those who even have to pay for that. No public opinion pools are provided, not even debates with the public about what they would like to see and listen.

It is only normal that the public has the right to the freedom of expression regarding broadcasting and access to a variety of programs which respond to their requirements concerning information, culture and entertainment without any other restrictions than payment of a fee. At the same time they must have the right to express their views on radio and television either personally or within the framework of representative organizations. All these have to be guaranteed by law.

The role of journalists in the Romanian society today is essential. But to reach this stage we need a reasonable number of good professional journalists and we need to get rid of old methods and practices. This can be achieved by training, and for that resources are needed. Time is also an important factor but it is a mistake to wait for the new generations to achieve that.

The Council of Europe and the CSCE Process in the Area of Information Policy

Lawrence Early

The possible future relationship between the Council of Europe and the CSCE in the area of mass media policy cannot be isolated from the wider issue regarding the nature of the future relations, in general, between the respective bodies.

Prior to analysing the specific contribution of the Council of Europe to the development of media law and policy, including the human rights dimensions thereof - in the possible perspective of cross-fertilisation of ideas and activities between the Organisation and CSCE process - a number of introductory general remarks should be offered so as to clarify the nature of their respective political roles.

General observations on the role of the respective bodies

The following observations may be made with regard to each of these key actors at a time when reflection is being engaged at the level of the new political architecture which should characterise the new Europe.

As regards the Council of Europe, it is an intergovernmental organisation, endowed with efficient institutional machinery and with a growing membership[1]. The CSCE process is a more recent phenomenon, moving towards the creation of institutions, seeking to embody its standard-setting

1 Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom.

pronouncements in concrete actions, and, at the same time, its membership is also increasing[2].

The values of pluralistic democracy, the protection of fundamental rights and freedoms, and respect for the rule of law, which underpin the functioning of the Council of Europe and determine the conditions of membership of the Organisation, also lie at the heart of the objectives of the CSCE process. The Charter of Paris, adopted in December 1989, devoted its first Chapter to the commitments entered into by the States participating in the Paris Conference with regard to Human Rights, Democracy and the Rule of Law. The participating States affirmed in the Charter a catalogue of individual rights, including, it may be noted at this stage, the freedom of expression. This, so-called, human dimension of security and co-operation has been followed up in the post-Paris Conferences of the CSCE's Council of Ministers. This is not surprising, given that implementation and furtherance of this dimension was pledged in the Paris Charter.

From the point of view of the Council of Europe's intellectual involvement in the run-up to the Helsinki Summit scheduled for July 1992, it is important to note that in many of the texts emerging from the CSCE meetings and Conferences, specific reference has been made to the work of the Council of Europe. Moreover, the Organisation has been invited to make contributions to these various pre-Helsinki events.

By way of illustration, the Paris Charter is quite explicit in regard to the value of the work of the Council of Europe to the discussions taking place within the CSCE process on the human dimension of co-operation and security:

"We recognise the important contribution of the Council of Europe to the promotion of human rights and the principles of democracy and the rule of law as well as to the development of cultural cooperation. We welcome moves by several participating states to join the Council of Europe and adhere to its European Convention on Human Rights. We welcome as well the readiness of the Council of Europe to make its experience available to the CSCE."

More recently, at the second meeting of the Council of Ministers of the CSCE, held in Prague in January 1992, the concluding document on further development of the CSCE institutions and structures refers to the role and activities of the Council of Europe. To illustrate, under Chapter 3 of the Prague Document dealing with the human dimension, the Office for Democratic

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2 Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech and Slovak Federal Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkmenistan, Turkey, Ukraine, United Kingdom, United States of America, Uzbekistan, Yugoslavia.

Institutions and Human Rights (replacing the Office for Free Elections) is expected to:

> "develop co-operation with the Council of Europe in order to make use of its data base of resources and services".

More particularly, the Prague Document stipulates:

> "in order to avoid duplication of work especially in the fields enumerated above, the Ministers directed the Office to work closely with other institutions active in the field of democratic institution-building and human Rights, particularly the Council of Europe and the European Commission for Democracy through Law".

Contributions of the Council of Europe to the CSCE meetings

The Council of Europe has readily contributed to the CSCE meetings following the Paris Conference, presenting submissions which illustrate the specific contribution which it has made to areas such as the protection of minorities (Geneva, July 1991), democratic institutions (Oslo, November 1991) and to the human dimension in general (Moscow, September 1991.) The contribution presented by the Council of Europe to the Moscow meeting of the CSCE Conference on the Human Dimension is of especial importance, given that it graphically described how the Council of Europe, since its inception, has worked for the maintenance and further realisation of human rights and fundamental freedoms. The submission of the Council of Europe reviewed the whole range of activities being conducted within the Organisation which have an impact on the human dimension of security and cooperation. If we proceed on the basis that the media fall squarely within this dimension (and we should take this as an accepted fact), it is possible to transpose the Moscow contribution of the Council of Europe so as to make it relevant to the specific activities of the Organisation in the area of media law and policy. Leaving aside achievements such as the elaboration of the European Social Charter and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (to which specific reference was made in the Moscow contribution), the following media-based achievements can be highlighted:

(1) The elaboration of the European Convention on Human Rights, the respect for which is entrusted to a European Court and Commission of Human Rights. As Professor Voorhoof stressed the freedom of expression and the free circulation of opinions and ideas without interference has been enshrined in

this fundamental document, allowing the Convention's control organs to be the ultimate arbiters of the legitimacy of State restrictions on this right.

(2) The elaboration of policies at the level of its member States so as to promote further the specific media rights and freedoms laid down in the Convention. For example:

> (i) The Declaration of the Committee of Ministers on Freedom of Expression and Freedom of Information of 29 April 1982 in which the governments of the member states reiterated their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralistic society and declared that in the field of information and media they would seek to achieve, inter alia:
>
> "The protection of the right of everyone, regardless of frontiers, to express himself, to seek and receive information and ideas, whatever their source, as well as to impart them under the conditions set out in Article 10 of the ECHR."
>
> "The existence of a wide variety of independent and autonomous media, permitting the reflection of a diversity of ideas and opinions."
>
> (ii) The elaboration of the European Convention on Transfrontier Television. The Convention is illustrative of the complementarity between the activist judicial approach taken by the European Court of Human Rights to the provisions of Article 10 of the European Convention on Human Rights and the policy-making goals of the Council of Europe at the intergovernmental level. If the control organs of the ECHR have interpreted the latter as a "living instrument" which must evolve so as to respond to the particularities of new situations, then the same enlightened view has been taken by the responsible intergovernmental body of the Council of Europe for questions of mass media law and policy, namely the Steering Committee on the Mass Media.

In elaborating the European Convention on Transfrontier Television, the drafters resolved to provide for a sectoral application of the freedom of expression and information proclaimed in Article 10 to the specific needs and requirements of transfrontier television services. It is against this background that Article 4 of the European Convention postulates the principle of freedom of reception of transfrontier television services and non-interference with their retransmission on the territory of Contracting Parties to the Convention. The

Convention, in providing an appropriate framework for the operation of the new broadcasting technologies characterised by respect for the provisions of Article 4, also seeks to provide a harmonised minimum set of agreed rules which should be respected by transmitting and receiving Parties.

It is important to underline the fact that the European Convention on Transfrontier Television is an "open" treaty in the sense that it may be acceded to by non-member States of the Council of Europe. In fact, the Convention was open to the signature of member States, the European Communities, as well as States Parties to the European Cultural Convention. However, in addition to this range of possible Contracting Parties, the Convention was openly declared to be available for signing and accession by countries not falling within the above circle.

We can thus see that the European Convention on Transfrontier Television, via the open nature of its legal status, provides a bridge between the Council of Europe member States and the new emerging democracies in Central and East European countries.

> (iii) Over and above the specific importance of the European Convention on Transfrontier Television, due importance should also be accorded to the whole panoply of measures adopted by the Committee of Ministers in the mass media field on the basis of the preparatory work carried out by the Steering Committee on the Mass Media and its subordinate bodies. I would refer you in this regard to the volume distributed to the Seminar participants which contains the legal instruments adopted by the Committee of Ministers in this area. Specific reference should also be made to the range of texts adopted by the Parliamentary Assembly of the Council of Europe which have provided the necessary impulsion on many occasions for intergovernmental work in the media field. Once again, copies of this volume have been made available to participants.

Programmes of co-operation and assistance for Central and East European countries of relevance to the mass media sector

The Council of Europe has undertaken a range of initiatives which are designed to allow a number of the Central and East European countries within the CSCE framework to take advantage of the Council of Europe's activities, including in the media field. At this juncture, specific reference should be made to the existence of the Council of Europe's Demosthenes Programme which is designed to aid the Central and East European countries to move towards the establishment of democratic institutions and to strengthen,

generally, their democratic reform processes. This Programme is specifically geared towards placing at the disposal of Central and East European countries the experience and expertise acquired by the Council of Europe and its member States in all aspects of the organisation and functioning of participatory democracy. From the point of view of the mass media, the Council of Europe has, in particular, organised expert reviews of the draft legislation being prepared by several of these countries. This activity will continue and intensify in the course of 1992 and beyond. The media professionals of these countries also benefit from a specially created medium-term training programme, designed to help them manage media systems in accordance with democratic and pluralistic requirements. This specific programme orientated towards the professionals themselves is being implemented by the Council of Europe in collaboration with the key actors in the written press and broadcasting sectors.

The decision has also been taken by the Committee of Ministers of the Council of Europe to open up certain of the Organisation's intergovernmental activities to the Governments of the Central and East European countries. For example, at the present time, Lithuania, the Russian Federation and Slovenia enjoy observer status in the Steering Committee on the Mass Media. However, beyond the grant of observer status to the specific countries of Central and Eastern Europe manifesting an interest in particular activities, the decision has also been taken to create pan-European Committee structures which allow Central and East European countries, designated by the Committee of Minsters, to participate in their activities.

Given its relevance to the field of media policy, specific reference should be made to the activities of the Pan-European Project Group "Equality of Opportunity in the building of a European Audio-visual area" (MM-EC). Under the authority of the Steering Committee on the Mass Media, and in liaison with professional circles concerned, the Project Group is expected to work out concrete and innovatory measures of a legal, technical, fiscal and financial nature to encourage audio-visual creativity in Europe and the circulation of European audio-visual works on the European and world markets. The Project Group is focusing, in particular, on measures which are likely to provide solutions to the specific problems encountered in this field by Central and East European countries, by other European countries with a low audio-visual output and limited geographic or linguistic coverage, as well as by small units of production and distribution of audio-visual works in larger European countries. Central and East European countries, non-member States of the Council of Europe, according to indications of the Committee of Ministers, may send representatives, without the right to vote, to meetings of the Project Group.

Working towards the goal of full membership of the Council of Europe

The overall goal for many of the Central and East European countries is full membership of the Council of Europe. Bulgaria, Czechoslovakia, Hungary and Poland have already become full members. Applications for full membership have been lodged by Estonia, Latvia, Lithuania, the Federation of Russia, Romania and Slovenia.

The political organs of the Council of Europe have constantly stressed their intention not to lower the standards which must be respected by aspiring members: respect for human rights and fundamental freedoms, pluralist and democracy and the rule of law. At the same time, there is a presumption that countries acceding to the statute of the Council of Europe will sign and ratify the European Convention on Human Rights, and will recognise the right of individual petition to the Convention's organs, as well as the compulsory jurisdiction of the European Court of Human Rights. In concrete terms, and in the context of the media, individuals who allege that public powers have interfered with their freedom of expression or their right to receive and impart information within their national territory or across frontiers, should be able to challenge the legality of such action before the European Commission of Human Rights and, ultimately, the European Court of Human Rights. A State judged to be in violation of Article 10 of the European Convention on Human Rights will be obliged to respect the ruling laid down by the Court.

Conclusion

Complementarity between the activities of the Council of Europe in the area of the human dimension of security and co-operation and those of the CSCE should be an essential part of the future scheme of things in Europe. The acquis of the Council of Europe must not be overlooked in the development of the CSCE process. From the point of view of the mass media, this acquis is considerable. At the same time, the Council of Europe is endeavouring to open up its activities, including in the media field, to the Central and East European nonmember States of the Organisation. A democratisation p ocess is now being undertaken with regard to those countries. The media are seen as an essential aspect of that process. These factors argue in favour of a complementarity of approaches.

This desired goal has been emphasised by the Director of Political Affairs of the Council of Europe in his statement to the opening of the Helsinki CSCE meeting in March 1992. In particular, the Director of Political Affairs stated that the Council of Europe Secretariat, acting on the instructions of its political organs, will endeavour to maintain effective liaison with the various bodies of the CSCE, in particular the Office of Democratic Institutions and Human Rights in Warsaw. Moreover, he also emphasised the readiness of the Council

of Europe to place its administrative structures and facilities at the disposal of all the CSCE States in the context of specific contributions to the pursuit of the CSCE's objectives in its human dimension as defined by the Helsinki Summit. He offered a number of basis principles in this regard. In the first place, proposals for such contributions should be aimed at objectives which have been identified by the CSCE and which also fall within the jurisdiction of the Council of Europe. Secondly, projects should be open to participation by all CSCE States on an equal footing, whether or not they are members of the Council of Europe. Finally, forms of co-operation should be mutually agreed in each case according to needs.

Against the background of these principles, I would suggest that the issue of the mass media could constitute an appropriate theme for collaborative work between the Council of Europe and the CSCE.

The Development of Media Cooperation Between European Countries

George Wedell

This paper sets out proposals for a programme of initiatives intended to contribute to the solution of the economic, political and social issues now faced by the media in the Central and Eastern European countries which are moving from command economies to open systems of mass communication. The programme aim the mutual understanding between West, Central and Eastern European countries in the view of an re-integrated Pan-European society.

A. The media as instruments of political reform and economic reconstruction

The context of the proposals is the dramatic acceleration in the process of political and economical change in Central and Eastern Europe towards democratic, pluralistic societies. The press and broadcasting clearly play a catalytic role in this sometimes peaceful, sometimes violent revolution, demonstrating once again the potential of the media to influence events . They are now at the focal point of endeavours to establish new political and economical structures. The democratization process all countries has shown that reform of the media is one of the first items on reform movement agendas.

These events in Central and Eastern Europe have been occurring a time when the media landscape in Western Europe has itself been undergoing a transformation. One aspect of this is the increase in transborder influences; in all areas of the media national enclaves are breaking down. It is becoming more difficult to insulate public opinion from information and opinions originating outside the country.

Another aspect the trend towards a more competitive, commercially-oriented environment in broadcasting. This raises important questions as to how the media can best be developed to enhance the quality of life and tap the creative and entrepreneurial potential of Europeans in the future. Central and Eastern European countries are becoming targets for

foreign investments in media. There is uncertainty about whether national media should be allowed to be taken over by foreign capital. On the conclusion drawn will depend whether the countries concerned will develop their own media industries.

The third major force for change is information and communication technology, which is providing, inter alia, increasingly powerful and versatile means of distributing information and entertainment. And the effect of many new technologies, eg. broadcast satellites, is to further break down the barriers to the free flow of information and programming between East and West.

The reform of the structure and operations of the media of mass communication is an essential part of the general movement of the Central and Eastern European countries towards a pluralist market economies. But the populations need to be informed about the danger taking place, and encouraged to participate in them. The creation by the media of an informed and dynamic body of citizens is an essential precondition of effective political reform and economic restructuring.

The time is, therefore, ripe to intensify the dialogue between East and West on media issues, building on the contacts which already exist. With this in mind the Institute has taken the initiative since 1989 to widen its network of relationships so that matters of common interest can be addressed and practical assistance given to East and Central Europeans in the transition to media independence. It has set up an East-West Relations Committee, bringing together media specialists from Eastern and Western Europe. The Committee has proposed the programme of action and will oversee its development.

B. The proposed programme

Work is proposed in the following related areas:

1. The establishment of information resources available to those responsible in the public and the private sectors for media development in East and Central Europe.
2. The position of consultation and advice for senior media policy makers, entrepreneurs, managers and administrators.
3. Management development and training of media entrepreneurs and professionals.
4. Professional training for future tutors of undergraduate and postgraduate media education institutions.
5. Research and development of the communications sector is one of the major growth points in the economies of Central and Eastern Europe.

These projects, if pursued in concert, can accelerate orderly and peaceful change in the print and electronic media of the countries concerned.

1. Information resources

The Institute has developed the most comprehensive collection in Europe of information and documentation on the media industries. As well as a wide ranging collection of books and journals, it runs a documentation centre which is a valuable resource for those working in areas 2-5 above.

The Institute for the Media is discussing with Central and Eastern European media organisations how their own information needs can be met from the sources of the Institute. It has identified a number of specific respects in which it can strengthen its capability to respond to the enlargement of its constituency.

(a) The enlargement of its holding of books, journals and documentation to cover all European countries;
(b) The expansion of its statistical series to include data from Central and. Eastern European countries;
(c) The employment of additional staff with competence in languages needed to look after the new areas of the information resources;
(d) The translation of Institute publications and documents into Central and East European languages and visa versa;
(e) The making available at soft currency rates of the Institutes material to the countries of Central and Eastern Europe.

A funding requirement of 500,000 ecus is estimated for the above activities over three years.

The Institute is also experiencing a growing demand in Western Europe for comprehensive and up-to-date information on all aspects of the media in Central and Eastern Europe. A comprehensive data bank is being established to underpin the other activities in the action programme.

2. Consultation and advice for senior media policy makers, entrepreneurs, managers and administrators

It has been agreed to hold a series of consultations over the next three years. They will bring together representatives of media organisations - broadcasters, programme producers, the print media etc - to discuss a range of specific issues arising from the opening of media relations between East and West.

The major joint conference is the annually organised Plenary Session of the European Television and Film Forum. The Forum provides an opportunity

for exchange and reflection between European professionals of the audio-visual field. At the yearly congress the working groups and consultants of the Forum report on the main preoccupations of the European audio-visual sector. The Second Plenary Session was held from 14 to 16 November 1990 in Warsaw. The invitation to hold it in Warsaw had been extended by the newly created Polish National Council of Independent Audiovisual Producers, the Polish Broadcasting Organization and the Polish Association of Journalists. The report of the Forum was published in April 1991. The Third Plenary Session was held on the 21-23 November, 1991 in Nice. There are wide range of possibilities of participating in this conference either by being member of the Forum or taking other joint positions.

The Working Groups of the Forum are currently considering the following projects:

- production and distribution of audio-visual programmes
- economic and social consequences of HDTV
- national regulatory bodies
- viewer and consumer interests in broadcasting
- piracy and copyright

These Working Groups ensure the permanent operation of the Forum in between two annual plenary meeting being involved in number of research projects concerning almost every aspect of the audio-visual field. The Working Groups have 2 or 3 meetings yearly.

Other consultations will also provide opportunities to review the results of joint research and to consider how they can be put into practice in specific circumstances.

The other joint meeting will be a seminar on the Political Content of Broadcasting. This is due to be held in Budapest in September 1991 by the invitation of Hungarian Television and Radio with the participation of Poland, Czechoslovakia and Hungary. This seminar will be a pilot piece of a series on various topics organised for all the countries of the region.

3. Management development and training of media entrepreneurs and professionals

It is proposed to establish a programme under which leading media experts and other postgraduated professionals from Central and Eastern Europe can spend time in Western Europe. The programme would offer three stages of training suitable for various level of the profession.

The first, shortest would enable top media executives to participate in two weeks intensive courses concentrating on media management, broadcasting policy, employment policy etc.

The second would give an opportunity for middle-level managers and advisers to take part in a 1-3 month training focusing on the above mentioned subjects. This period of one or three months partly could be spent with the European Institute for the Media and partly with one or more European media organisations. The aim is to give the participants some exposure to the best available experts in their area of specialization, as well as enabling them to gain an understanding of media developments in mixed economies.

The third stage of the offered training would be for postgraduate professionals who are entrants to the media profession. This would be included into the framework of the Advanced Studies Programme of the European Institute for the Media.

4. Professional training for future tutors of undergraduate and postgraduate media educational institutions

There is a manifest need for sound professional training for a variety of media occupations. This has led to the creation of Masters Degree Programmes in Western European Universities. Now universities in Central and Eastern Europe are anxious to develop similar programmes, for these staff have to be trained.

The Institute believes that these programmes are of potential value to such staff. It proposes therefore to encourage their participation in the programmes through the offer of studentship. It is envisaged that over three years a total of 18 studentship could be offered which would provide a group of qualified teachers for the proposed higher degree programmes.

5. Research

A programme of policy-oriented research activities is already under way. Two topics currently indentified are:

a The role of foreign capital in the media markets of East and Central Europe.
b Beyond Communism: Whither Eastern European Broadcasting.

The project directors are working closely with the East-West Cooperation Committee which supervises the progress of the research.

The projects involve full-time and part-time researchers. The cost of each research project is estimated at 120,000 ecus, this funding being needed to cover the employment of researchers travel and subsistence expenses, translation costs and related items.

The institute would like to allow for further research projects to be carried out over the next two or three years at a similar level of cost to the above. The subjects have yet to be determined, but can be expected to emerge as the East-West dialogue on media issues develops. The latest emerged project - Economic and Financial Conditions of Free Media - will examine the impact of economical changings on the freedom of the media on the way towards a democratic society.

Framework, Structures and Mechanisms

Bernard Blin

The issue which brings us together in the context of this Seminar is a difficult one to resolve. It may be seen in the following terms:

How is it possible to control the rapid and high-level development of the media in Europe without, however, allowing governments to control the content of information or the content of programmes?

How is it possible to organise freedom of information without restricting this freedom?

Who can implement these objectives, while distinguishing between the conceptual construction of principles and their subsequent application?

It is certainly true that the necessary reflection, in particular on a multi-disciplinary basis, requires initiatives to be formulated by Institutions such as those of Professor George Wedell (European Institute for the Media), or the Association which is chaired by Professor Lees Hamelink (International Association for Mass Communication Research, IAMCR).

Such organisations constitute entirely appropriate fora for engaging reflection on the evolution of the media. A great number of studies have already been carried out in various fora but, today, it is necessary to acquire a better understanding and appreciation of the major factors which characterise the development of the media in Europe: who takes the decisions? how are the major orientations in this evolutionary process determined, and in accordance with which procedures - authoritarian or democratic?

Replies to questions of this nature are situated at different levels:

- firstly, there is the **governmental** level which manages and implements national policies subject to control by parliaments and, often, to varying degrees of influence exerted by political, professional or other lobbies;
- secondly, there is the **European** level where Institutions such as the European Community, the Council of Europe, the Nordic Council, CSCE, etc. operate. Mr Early has already provided you with a number of elements in the course of his statement on the role of these Institutions in the area of the media in Europe;

- finally, there also exists the **professional** level. The more the profession itself organises its own affairs by means of deontological rules and codes of conduct, the less governments need to intervene. In the framework of the Council of Europe, media professionals are encouraged to study their specific problems and to propose solutions. However, when a particular solution is not within the competence of the profession, then, it is for governments to intervene, taking into consideration, of course, the interests of media users and their right to information.

Just as there are several levels of intervention, it must equally be recognised that there exist different approaches to master the evolution of the media in Europe, notably

- the first taking account of the **legal framework**;
- the second concerning the **operational structures**;
- the third dealing with the **support mechanisms**.

I. Legal Framework

Within the Council of Europe, we are presently engaged in the elaboration of the legal framework, a process which has already given rise to internationally binding legal instruments, such as the European Convention on Transfrontier Television, opened to signature by the Committee of Ministers of the Council of Europe on 5 May 1989.

For its part, the European Community has adopted the "Television without Frontiers" Directive. The provisions of the latter instrument are in harmony with those contained in the Convention. However, the Directive only applies to the 12 EEC States. In this regard, I would draw your attention to the excellent statement made by our Belgian colleague, Professor Voorhoof. His description of the principles contained in the Directive provides us with a good understanding of the essence of the Community approach.

It is equally necessary to underline the importance of the many, non-binding, legal instruments adopted by the Committee of Ministers of the Council of Europe in the media field. These so-called "Recommendations" have been reproduced in a document which has been made available to the participants at this seminar. Although these Recommendations are not binding on the level of the "Television Convention" of the Council of Europe, they nevertheless represent an excellent method of encouraging States to take various concerted or harmonised measures in a range of different areas, for example the right of the public to have access to major events in respect of which the television rights have been acquired exclusively by a particular broadcaster. The approach of the Council of Europe to this particular area is set out in the Recommendation adopted in April 1991 by the Committee of

Ministers on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context. There is a contradiction between **commercial logic**, which makes it possible for a broadcaster, by paying the highest price, to acquire an exclusive right, and the right of the citizen to have access to major events of interest to him. It is this issue which it is sought to address in this Recommendation.

Other issues discussed within the framework of the Council of Europe deserve consideration. For example, the improvement and promotion in Europe of the production, distribution and marketing of audio-visual works. Reference may also be made to the issue of copyright and neighbouring rights embodied in the programme material used for satellite transmissions and cable distribution.

Another issue is that of sound and audio-visual piracy which is assuming significant proportions in the audio-visual and sound recording sectors. In this regard, one only has to refer to the enormous amount of illegal recordings and the profits made from their commercialisation. However, if concrete measures are not taken by governments aimed at reducing and subsequently eliminating piracy, then, there is a risk that artistic creation will be diminished when those who are at the basis of artistic creation no longer feel that their rights are being sufficiently protected. In the final analysis, right holders might even abandon their countries and emigrate to countries where artistic creation is better guaranteed. The issue of sound and audio-visual piracy is currently engaging the attention of the Council of Europe through the instrumentality of its competent committee in the area of audio-visual policy namely, the Steering Committee on the Mass Media.

These are only some examples of the nature of the important work being conducted by the Council of Europe in the media field. For the sake of completeness, I should also refer to the work accomplished by the Council of Europe in elaborating and adopting a Recommendation on the legal protection of encrypted television services (Recommendation No. (91) 14). I would also like to refer to the attention accorded by the Steering Committee on the Mass Media to issues such as new forms of sponsorship and commercial promotion, media concentrations and pluralism, and the circulation of videograms of a violent, brutal or pornographic content. The latter phenomenon, which has led to the adoption by the Committee of Ministers of a Recommendation to curb their circulation, reflects a desire to ensure the dignity of the human being, in particular the sensitivity of children and young people. I will revert to these considerations in the context of my discussions of the citizenviewer.

In reality, the problems and the solutions vary in accordance with the type of television concerned. From my point of view, there exist three major types of television:

1. **"Television of the Commissaires"**. This type of television has been seen too often in the East European countries. Its aim is to impoverish the

spirit and to dictate individual and group behaviour by suppressing any form of freedom of expression and, in particular, the right to criticise the government as well as the party in power. Not only are programmes censored, but the viewing of, or listening to, information broadcast from foreign countries are sometimes prohibited under pain of sanction. This is in complete contradiction to the principle espoused, by the member States of the Council of Europe in application of Article 10 of the European Convention on Human Rights. We should recall that this fundamental right provides each citizen with a right to inform himself or herself by having access to any source of information of his or her choice, and regardless of frontiers.

2. **"Television of the Merchants"**. This type of television service is linked to purely commercial logic Those who possess and control television services of this nature seek to amortise their financial investments and to profit from their commercial activity. It involves attracting the greatest possible audiences so as to sell the greatest amount of advertising space at the highest price possible. In some respect, programmes are not being broadcast with the interest of the public in mind. Rather, audiences are being sold to advertising agencies.

3. **"Television of the Citizens"**. In this model, the individual is not considered as a mere consumer. Rather, he is regarded as a citizen who has the right, regardless of his economic, social or cultural circumstances, to have access to information, to acquire knowledge and to educate himself via the media. It is against the background of this particular model, that measures are being elaborated so as to ensure that advertising and commercial preoccupations do not dominate all the various developments which characterise the television landscape. It seems to us to be necessary to bring about a cleavage, or at least a readjustment, in the evolution which we are presently witnessing and which tends to place the emphasis on commercial freedom to the detriment of the public interest.

It is this very same preoccupation to satisfy all the various interests in question which encourages policy makers to adopt mixed, or co-habiting, regimes which are characterised by the existence of commercial television services and public service television.

II. Structures

As regards structures, it is interesting to note the nature of the work of the Council of Europe, given that the latter body constitutes a structure englobing a geographical zone greater than that of the EEC. In addition, the structure

offered by the Council of Europe makes it possible to associate the voices of the professionals with those of governmental experts representing the member States of the Organisation. The Council of Europe is thus a "Forum" wherein views and experiences can be exchanged. It need hardly be emphasised that structures which lend themselves to such types of exchanges are a great advantage.

Progress in research and the development of the media would be even more rapid if we could acquire the necessary knowledge and appreciation of the various analyses and experiments which have been carried out in different fora. I would express the hope that the remaining part of this Seminar will make this possible.

However, the Strasbourg "Forum" is also necessary for the elaboration of concerted policies. We will have increasing need for such policies in the future, given that interdependence of the states in the European continent is growing at the same time as the need for political consultation and professional co-operation. These are two components of the evolution of the situation in Europe.

The reflections and proposals of civil servants, governmental experts and the representatives of administrations increase in value through the contributions made possible as a result of the participation of professional bodies in the very many committees which characterise the intergovernmental work of the Council of Europe, either as observers or as participants invited to "hearings". Among many different types of examples, I would make particular reference to the work of the "Project Group on Equality of Opportunity in the building of a European audio-visual area" Within that particular Group, analysis takes place of the measures which should be taken to avoid neglecting the interests of the smaller European partners or the smaller production companies which are unable to meet the increasing costs of broadcasting and production technology, and are thus denied the possibility to compete on an equal footing with the more privileged partners.

In his, somewhat provocative, introductory statement, Professor Hamelink expressed the view that the right to information is no longer adapted to The present situation, and that the time has come to transform this fundamental human right. It is necessary to reply to him in the following terms: "No, do not touch human rights. Complete them in new fields such as the environment or render their application more efficacious by means of new methods. But do not modify what already exists".

In this context, the initiatives taken in Strasbourg deserve attention. Such initiatives are designed to eliminate the differences which exist between the "larger" and the "smaller" European countries, the latter having limited capacities to produce, acquire equipment or train professionals. Our aim is to ensure that the absence of the appropriate means does not encourage the creative talent in these countries to abandon them with the result that such countries, lacking access to the means necessary for transfrontier broadcasting,

are subsequently invaded by numerous foreign language programmes portraying cultures other than their own.

This is indeed a new challenge for Europe which, in certain respects, recalls the tension which previously existed in the relations between the North and the South, a tension illustrated by the imbalances in production capacities and abilities to broadcast information. Addressing themselves to the industrialised nations, the developing States claimed, and even demanded, assistance so as to eliminate these imbalances. We must strive to avoid a similar situation occurring within Europe

III Mechanisms

Is there a need to establish mechanisms so as to confront this challenge ? In other words, is there a need to find concrete ways which make it possible to facilitate a harmonious development of the audio-visual sector in a pan-European perspective? In this regard, I would like to offer the following observations:

a. In what ways can production and co-productions be supported? We are all aware of the positive influence which the EURIMAGES Fund is having on the production of cinematographic and audio-visual co-productions. The participating governments contribute funds to this mechanism, which are subsequently redistributed to projects which meet the criteria determined by the Board of Management of EURIMAGES. However, and this should be stressed, the financial results are not on a par with the initial contributions. In other words, the governments of the rich countries provide more funding to the EURIMAGES Fund, while their own productions may receive less.

This latter aspect may be seen as a process which is in conformity with the principle of solidarity. It is not unlike the circumstances in which the television sector in a country like the former Yugoslavia was able to develop as a result of the "sliding scale" of contributions made to the European Broadcasting Union. As a result of tariffs which were specifically adapted to the resources of the respective countries, a television sector characterised by a lack of resources was able to benefit, at very reduced rates, from the purchase of programmes in the Eurovision framework, as well as from the technical facilities necessary for their transmission. The broadcasters from the richer countries accepted, quite voluntarily, the need to show solidarity among professionals, a strategy which makes possible the rapid development of radio and television broadcasting in the whole of the European continent.

b. How is it possible to facilitate the financing and co-financing of audio-visual productions? We have to recognise that this problem is even more difficult to resolve in the case of those countries which lack a convertible currency. Perhaps we should reflect on the possibility of setting up "clearing houses" which would prevent the loss of opportunities for mounting co-productions with certain countries having a weak currency?

c. In what way should the distribution and marketing of audio-visual productions beyond national markets be promoted? At the present time, we are studying the conditions for creating "pools" or a sort of European distribution agency. This issue is not solely confined to helping smaller European partners. It also concerns small production units in the larger European countries. It is our wish to facilitate pluralism and diversity of expression for all creative resources in Europe.

d. How can we contribute to the improvement and development of training and improvement of professional skills? It goes without saying that the aim should be to reply to the specific needs required in the present context. In this regard, there is no need to teach camera techniques to Hungarian cinema professionals - they already know, better than us, how this should be done. On the other hand, we can instruct the professionals in Central and East European countries in contract techniques in a market economy. Within the Council of Europe, we are endeavouring to establish a very light mechanism which would make it possible to list all the various existing structures capable of providing particular forms of training. And, moreover, we are attempting to institute a system by which individuals requesting training in particular audio-visual skills could be placed in contact with training providers. Accordingly, this mechanism is intended to allow those in need of training to have access to a range of different bodies which can satisfy their specific requirements. It will be for the applicants to exercise their free choice in regard to the body which they deem most suitable for satisfying their particular training needs.

e. In discussing the various types of "mechanisms", reference should also be made to EURIMAGES. I have already made mention of this important initiative. In addition, I would refer to the important role being played by Audiovisual EUREKA which is showing itself to be a sort of catalyser" - granting its prestigious label to various audio-visual projects and opening up increased possibilities for their funding. Mr Liedes, who is chairing our session today, will no doubt develop, for our benefit, the main functions and activities of Audiovisual EUREKA. As you know, Finland currently holds the Chair of the Coordinators' Committee of Audio-visual EUREKA.

The EC Commission is also involved in overseeing a number of different mechanisms which ha-e been grouped together within the MEDIA Programme. Under certain conditions. the benefits of the MEDIA Programme may also devolve on the nationals of certain of the EFTA countries.

I would refer to one of the specific programmes organised within the framework of the MEDIA Programme namely, "BABEL" This Programme, which is implemented by the EBU, makes it possible to facilitate the international distribution of television works by promoting language transfer by means of support for translation, dubbing and sub-titling. In so doing, an important step is being made towards minimising one of the major obstacles to the circulation of audio-visual works in Europe namely, the different national languages which characterise our continent. Emphasis has already been placed on the need for a large market going beyond the territorial confines of particular European countries so as to amortise the investments made in the context of audio-visual production. While the United States offers American productions a very large national market for their exploitation, Europe, on the other hand, requires linguistic barriers to be overcome before a production can be amortised in several countries. This theme has been further developed in a most interesting study which has been carried out by the European Institute for the Media, whose Director General, Professor George Wedell, is with us today.

Another example fully deserves to be mentioned - the activities of the Project Group "Equality of Opportunity in the building of a European audio-visual area" (MM-EC). This body, which is situated within the framework of the Council of Europe, is presently engaged, inter alia, in following up the conclusions of a Workshop which was organised in Hanasaari. Finland, with the participation of governmental experts and audio-visual professionals. The Project Group is now endeavouring to concretise the ideas emerging from the Workshop into substantive measures. In this regard, attention is being accorded the conditions necessary for the creation of "Sociétés de Movens" or "resources companies" so as to avoid private producers, replete with ideas but scarce on technical facilities, having to compromise their independence. Companies of the type which I have mentioned bring together the means necessary for bringing audio-visual productions to fruition and function within a co-operative context. When the need arises. Such companies place at the disposal of producers their manufacturing potential.

Although they do not share the same multilateral character, reference should also be made to "joint ventures". France, for example, has organised a radio station in Portugal as well as in other countries, including Russia (Moscow). The responsibilities for the running of such radio stations are shared equally between France and the country where the radio station is situated. The programme is thus realised as a result of the support offered by each partner. However, this system should not exclude other ways of instituting co-operation, in particular through the instrumentality of coproductions.

If it is our intention to develop teaching and training in techniques of legal and financial arrangements adapted to the requirements of audio-visual co-operation, we do so because there are advantages to be gained from this. In particular, we are firmly convinced that it is necessary to promote co-productions between partners in the West European countries and those in the Central and East European countries. In the same vein, we perceive it to be necessary to encourage co-operation between the larger, more well-off, television organisations, and television companies having lesser resources. The smaller television companies must not be confined to a ghetto. On the contrary, it is necessary to bring together and to associate television bodies characterised by different sorts of potential. Such an exercise will facilitate the commercial distribution of works so co-produced.

Another example will demonstrate the fragility and vulnerability of the broadcasting sector in those countries with limited resources and which, as a result, remain "isolated": High Definition Television. How can such countries finance, alone, the cost of the manufacture of this new technology so as to allow them to broadcast programmes in High Definition? Are we prepared to accept a vision of Europe moving at several speeds in the audio-visual sector and in which certain states will be able to exploit the advance technologies, while others will not have the capacity to produce and to broadcast in High Definition, in particular programmes which express the finest features of their culture and civilisation? Such a situation is scarcely tolerable. That is why it is necessary to try and bring together all the different technical and human resources and to share the opportunities for having access to this technology.

Conclusions

It is also necessary to examine what may be expected from the CSCE process. Mr Lawrence Early has already described the relations which could usefully be established with this process. Indeed, it is necessary to take advantage of all opportunities which arise for engaging reflection on what could constitute "television of citizens for citizens".

However, given that certain among us have mentioned the perspective of the Warsaw Office on Human Rights and Democratic Institutions, we could usefully enquire to what extent this Office could play a role in favour of the freedom of information and the contributions which non-governmental organisations could make to it.

However, confronted with a situation which is evolving rapidly, we must not overlook the new challenge: the need to promote equality of opportunity and to avoid imbalances in the capacities for communication between and among the states of Europe.

In this evolution, it is necessary to be attentive to the logic of interdependence. Certain countries, which were subordinated to foreign

powers, will perhaps never really know a true independence, and will find themselves in a situation of interdependence.

So as to master the evolution, it is necessary to remind ourselves of the advantages of the activities carried out collectively, and with the support of networks. Isolated activities rarely bear fruit.

To give you an example of a network which has shown itself to be particularly effective, I would refer to the European Broadcasting Union. The disappearance of the other network which characterised the "old order" in Europe, the OIRT, gives rise to the risk that new problems will arise for the former members of OIRT when the latter are confronted with the heavy costs of the new telecommunications tariffs.

The International Radio and Television University provides another example of a structure and of networks which are particularly suited to the exchange of radio and television programmes having a cultural vocation extending from North to South and East to West.

Confronted with all the different technological and political changes, it would not be prudent to shelter behind a "wait and see" policy. Now is the time to undertake initiatives within the framework of structures in which we can act. The CSCE may be one of these structures. We already know how the third basket of the CSCE has shown itself to be useful, particularly in the perspective of the countries moving away from totalitarian regimes.

In his statement, Professor Zassoursky expressed a certain degree of pessimism in regard to the evolution which is running through our European societies. If the media are to play a role in this evolution, which carries with it a certain degree of anxiety for the future of our continent, then it is the issue of minorities which must occupy our attention. Can we believe that the media are prepared to treat the problems of the various minority groups which may arise tomorrow, to believe that our media are capable of guaranteeing an accurate portrayal of the situation which has arisen in Yugoslavia? Do we believe that the populations of Europe have been sufficiently warned of the possible consequences of the Yugoslavian situation and of the precedent which this situation could create for other countries?

In raising these issues, fundamental aspects of responsibility and the sharing of responsibility are also being raised. In accordance with the fundamental principle of freedom of information, it is not for governments to intervene in programme content. However, governments, in particular within the framework of a multilateral setting such as the Council of Europe, must come to the aid of the profession in helping it to overcome its difficulties and to improve the quality of information. This factor explains why I have insisted on the importance of structures and mechanisms which make it possible to bring together and to coordinate all of the different forces which are capable of being used to solve problems of this nature.

Annex I

CSCE HELSINKI DOCUMENT 1992
THE CHALLENGES OF CHANGE
(Excerpts)

Promises and problems of change

1. We, the Heads of State or Government of the States participating in the Conference on Security and Co-operation in Europe, have returned to the birthplace of the Helsinki process, to give new impetus to our common endeavour.

2. The Charter of Paris for a New Europe, signed at the last Summit, defined a common democratic foundation, established institutions for co-operation and set forth guidelines for realization of a community of free and democratic States from Vancouver to Vladivostok.

3. We have witnessed the end of the cold war, the fall of totalitarian regimes and the demise of the ideology on which they were based. All our countries now take democracy as the basis for their political, social and economic life. The CSCE has played a key role in these positive changes. Still, the legacy of the past remains strong. We are faced with challenges and opportunities, but also with serious difficulties and disappointments.

4. We have met here to review recent developments, to consolidate the achievements of the CSCE and to set its future direction. To meet new challenges we are approving here today a programme to enhance our capabilities for concerted action and to intensify our co-operation for democracy, prosperity and equal rights of security.

5. The aspirations of peoples freely to determine their internal and external political status have led to the spread of democracy and have recently found

expression in the emergence of a number of sovereign States. Their full participation brings a new dimension to the CSCE.

6. We welcome the commitment of all participating States to our shared values. Respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities, democracy, the rule of law, economic liberty, social justice and environmental responsibility are our common aims. They are immutable. Adherence to our commitments provides the basis for participation and co-operation in the CSCE and a cornerstone for further development of our societies.

7. We reaffirm the validity of the guiding principles and common values of the Helsinki Final Act and the Charter of Paris, embodying responsibilities of States towards each other and of governments towards their people. These are the collective conscience of our community. We recognize our accountability to each other for complying with them. We underline the democratic rights of citizens to demand from their governments respect for these values and standards.

8. We emphasize that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. The protection and promotion of the human rights and fundamental freedoms and the strengthening of democratic institutions continue to be a vital basis for our comprehensive security.

9. The transition to and development of democracy and market economy by the new democracies is being carried forward with determination amidst difficulties and varying conditions. We offer our support and solidarity to participating States undergoing transformation to democracy and market economy. We welcome their efforts to become fully integrated into the wider community of States. Making this transition irreversible will ensure the security and prosperity of us all.

10. Encouragement of this sense of wider community remains one of our fundamental goals. We welcome in this connection the rapid adaptation of European and transatlantic institutions and organizations which are increasingly working together to face up to the challenges before us and to provide a solid foundation for peace and prosperity.

The European Community (EC), fulfilling its important role in the political and economic development of Europe, is moving towards a union and has decided to broaden its membership. It is closely involved in CSCE activities.

The North Atlantic Treaty Organization (NATO), one of the essential transatlantic links, has adopted a new strategic concept and strengthened its role as an integral aspect for security in Europe. Through establishment of the North Atlantic Co-operation Council (NACC) it has established patterns of co-operation with new partners in harmony with the goals of the CSCE. It has also offered practical support for the work of the CSCE.

The Western European Union (WEU) is an integral part of the development of the European Union; it is also the means to strengthen the European pillar of the Atlantic Alliance; it is developing an operational capacity; it is opening itself to additional co-operation with new partners and has offered to provide resources in support of the CSCE.

The Council of Europe is elaborating its own programmes for new democracies, opening up to new members and is co-operating with the CSCE in the human dimension.

The Group of Seven and the Group of Twenty-Four are deeply engaged in assistance to countries in transition.

The Organisation for Economic Co-operation and Development (OECD), United Nations Economic Commission for Europe (ECE) and the European Bank for Reconstruction and Development (EBRD) have a key role to play in the construction of a new Europe.

The Commonwealth of Independent States (CIS) has stated its readiness to assist the CSCE in pursuit of its objectives.

These and the other forms of regional and sub-regional co-operation which continue to develop, such as the Council of the Baltic Sea States, the Visegrad Triangle, the Black Sea Economic Co-operation and the Central European Initiative, multiply the links uniting CSCE participating States.

11. We welcome the adoption of the Vienna 1992 Document on Confidence- and Security-building Measures and the signature of the Treaty on Open Skies, with the adoption of the Declaration on the Treaty on Open Skies. We also welcome the imminent entry into force of the Treaty on Conventional Armed Forces in Europe (CFE) and the Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe. These agreements provide a solid foundation for our further security co-operation. We welcome the recent United States-Russian joint understanding on Strategic Offensive Arms. We reaffirm our commitment to become original signatories to the forthcoming convention on the prohibition of the development,

production, stockpiling and use of chemical weapons and on their destruction, and urge other States to do so.

12. This is a time of promise but also a time of instability and insecurity. Economic decline, social tension, aggressive nationalism, intolerance, xenophobia and ethnic conflicts threaten stability in the CSCE area. Gross violations of CSCE commitments in the field of human rights and fundamental freedoms, including those related to national minorities, pose a special threat to the peaceful development of society, in particular in new democracies.

There is still much work to be done in building democratic and pluralistic societies, where diversity is fully protected and respected in practice. Consequently, we reject racial, ethnic and religious discrimination in any form. Freedom and tolerance must be taught and practised.

13. For the first time in decades we are facing warfare in the CSCE region. New armed conflicts and massive use of force to achieve hegemony and territorial expansion continue to occur. The loss of life, human misery, involving huge numbers of refugees have been the worst since the Second World War. Damage to our cultural heritage and the destruction of property have been appalling.

Our community is deeply concerned by these developments. Individually and jointly within the CSCE and the United Nations and other international organizations, we have sought to alleviate suffering and seek long term solutions to the crises which have arisen.

With the Helsinki decisions, we have put in place a comprehensive programme of co-ordinated action which will provide additional tools for the CSCE to address tensions before violence erupts and to manage crises which may regrettably develop. The Council and the Committee of Senior Officials have already established for the CSCE an important role in dealing with crises which have developed within our area.

No international effort can be successful if those engaged in conflicts do not reaffirm their will to seek peaceful solutions to their differences. We stress our determination to hold parties to conflicts accountable for their actions.

14. In times of conflict the fulfilment of basic human needs is most at risk. We will exert every effort to ensure that they are met and that humanitarian commitments are respected. We will strive to relieve suffering by humanitarian cease-fires and to facilitate the delivery of assistance under international supervision, including its safe passage. We recognize that the refugee problems resulting from these conflicts require the co-operation of all

of us. We express our support for and solidarity with those countries which bear the brunt of the refugee problems resulting from these conflicts. In this context we recognize the need for co-operation and concerted action.

15. Even where violence has been contained, the sovereignty and independence of some States still needs to be upheld. We express support for efforts by CSCE participating States to remove, in a peaceful manner and through negotiations, the problems that remain from the past, like the stationing of foreign armed forces on the territories of the Baltic States without the required consent of those countries.

Therefore, in line with basic principles of international law and in order to prevent any possible conflict, we call on the participating States concerned to conclude, without delay, appropriate bilateral agreements, including timetables, for the early, orderly and complete withdrawal of such foreign troops from the territories of the Baltic States.

16. The degradation of the environment over many years threatens us all. The danger of nuclear accidents is a pressing concern. So are, in several parts of the CSCE area, defence-related hazards for the environment.

17. The present proliferation of weapons increases the danger of conflict and is an urgent challenge. Effective export controls on nuclear materials, conventional weapons and other sensitive goods and technologies are a pressing need.

The CSCE and the management of change

18. The CSCE has been instrumental in promoting changes; now it must adapt to the task of managing them. Our decisions in Helsinki are making the CSCE more operational and effective. We are determined to fully use consultations and concerted action to enable a common response to the challenges facing us.

19. In approaching these tasks, we emphasize the central role of the CSCE in fostering and managing change in our region. In this era of transition, the CSCE is crucial to our efforts to forestall aggression and violence by addressing the root causes of problems and to prevent, manage and settle conflicts peacefully by appropriate means.

20. To this end, we have further developed structures to ensure political management of crises and created new instruments of conflict prevention and crisis management. We have strengthened the Council and the Committee of

Senior Officials (CSO) and devised means to assist them. The CSCE capacities in the field of early warning will be strengthened in particular by the activities of the newly established High Commissioner on National Minorities.

We have provided for CSCE peacekeeping according to agreed modalities. CSCE peacekeeping activities may be undertaken in cases of conflict within or among participating States to help maintain peace and stability in support of an ongoing effort at a political solution. In this respect, we are also prepared to seek, on a case-by-case basis, the support of international institutions and organizations, such as the EC, NATO and WEU, as well as other institutions and mechanisms, including the peacekeeping mechanism of the CIS. We welcome their readiness to support CSCE peacekeeping activities, including by making available their resources.

We are further developing our possibilities for peaceful settlement of disputes.

21. Our approach is based on our comprehensive concept of security as initiated in the Final Act. This concept relates the maintenance of peace to the respect for human rights and fundamental freedoms. It links economic and environmental solidarity and co-operation with peaceful inter-State relations. This is equally valid in managing change as it was necessary in mitigating confrontation.

22. The CSCE is a forum for dialogue, negotiation and co-operation, providing direction and giving impulse to the shaping of the new Europe. We are determined to use it to give new impetus to the process of arms control, disarmament and confidence- and security-building, to the enhancement of consultation and co-operation on security matters and to furthering the process of reducing the risk of conflict. In this context, we will also consider new steps to further strengthen norms of behaviour on politico-military aspects of security. We will ensure that our efforts in these fields are coherent, interrelated and complementary.

23. We remain convinced that security is indivisible. No State in our CSCE community will strengthen its security at the expense of the security of other States. This is our resolute message to States which resort to the threat or use of force to achieve their objectives in flagrant violation of CSCE commitments.

24. Essential to the success of our efforts to foster democratic change within the CSCE framework will be increased co-operation with other European and transatlantic organizations and institutions. Therefore, we are convinced that a lasting and peaceful order for our community of States will be built on

mutually reinforcing institutions, each with its own area of action and responsibility.

25. Reaffirming the commitments to the Charter of the United Nations as subscribed to by our States, we declare our understanding that the CSCE is a regional arrangement in the sense of Chapter VIII of the Charter of the United Nations. As such, it provides an important link between European and global security. The rights and responsibilities of the Security Council remain unaffected in their entirety. The CSCE will work together closely with the United Nations especially in preventing and settling conflicts.

26. We restate our unreserved condemnation of all acts, methods and practices of terrorism. We are determined to enhance our co-operation to eliminate this threat to security, democracy and human rights. To this end, we will take measures to prevent in our territories criminal activities that support acts of terrorism in other States. We will encourage exchange of information concerning terrorist activities. We will seek further effective avenues for co-operation as appropriate. We will also take the necessary steps at a national level to fulfil our international obligations in this field.

27. Illicit trafficking in drugs represents a danger to the stability of our societies and democratic institutions. We will act together to strengthen all forms of bilateral and multilateral co-operation in the fight against illicit trafficking in drugs and other forms of international organized crime.

28. We will work to reinforce the close link which exists between political pluralism and the operation of a market economy. Enhanced co-operation in the field of economy, science and technology has a crucial role to play in strengthening security and stability in the CSCE region.

29. Economic co-operation remains an essential element of the CSCE. We will continue to support the transformations under way to introduce market economies as the means to enhance economic performance and increased integration into the international economic and financial systems.

30. We will also facilitate expanded economic co-operation which must take account of the prevailing political and economic conditions. We welcome the contribution of economic, financial and technical assistance programmes of the Group of Seven and the Group of Twenty-Four to the transition process. In the framework of our co-operation we fully support the further development of the European Energy Charter which is of particular importance in the period of transition.

31. We will work together to help facilitate means of transportation and communication in order to deepen co-operation among us.

32. We renew our commitment to co-operate in protecting and improving the environment for present and future generations. We stress in particular the importance of co-operation to effectively ensure the safety of nuclear installations and to bring defence-related hazards for the environment under control.

We emphasize the need for greater public awareness and understanding of environmental issues and for public involvement in the planning and decision-making process.

We welcome the important outcome of the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992. We emphasize the need for effective and sustained implementation of UNCED decisions.

33. Further steps must be taken to stop the proliferation of weapons. It remains vital to ensure non-proliferation of nuclear weapons and the relevant technology and expertise. We urge all States which have not acceded to the Treaty on Non-proliferation of Nuclear Weapons to do so as non-nuclear weapons States and to conclude safeguards agreements with the International Atomic Energy Agency (IAEA). We commit ourselves to intensify our co-operation in the field of effective export controls applicable to nuclear materials, conventional weapons and other sensitive goods and technologies.

34. We welcome the development of regional co-operation among CSCE participating States as a valuable means of promoting pluralistic structures of stability. Based on the CSCE principles and commitments, regional co-operative activities serve the purpose of uniting us and promoting comprehensive security.

35. We encourage wide-ranging transfrontier co-operation, including human contacts, involving local and regional communities and authorities. This co-operation contributes to overcoming economic and social inequalities and enhancing ethnic understanding, fostering good-neighbourly relations among States and peoples.

36. In order to ensure full participation and co-operation by recently admitted participating States we are initiating a programme of co-ordinated support.

37. We reaffirm our conviction that strengthening security and co-operation in the Mediterranean is important for stability in the CSCE region. We recognize that the changes which have taken place in Europe are relevant to the Mediterranean region and that, conversely, economic, social, political and security developments in that region have a direct bearing on Europe.

38. We will therefore widen our co-operation and enlarge our dialogue with the non-participating Mediterranean States as a means to promote social and economic development, thereby enhancing stability in the region, in order to narrow the prosperity gap between Europe and its Mediterranean neighbours and protect the Mediterranean ecosystems. We stress the importance of intra-Mediterranean relations and the need for increased co-operation within the region.

39. We welcome and encourage the continuation of initiatives and negotiations aimed at finding just, lasting and viable solutions, through peaceful means, to the outstanding crucial problems of the Mediterranean region.

40. We have expanded dialogue with non-participating States, inviting them to take part in our activities on a selective basis when they can make a contribution.

41. We welcome the establishment of the CSCE Parliamentary Assembly which held its first meeting in Budapest on 3 to 5 July and look forward to the active participation of parliamentarians in the CSCE process.

42. We attach particular importance to the active involvement of our publics in the CSCE. We will expand the opportunities for contributions by and co-operation with individuals and non-governmental organizations in our work.

43. In order to foster our partnership, and to better manage change, we have today in Helsinki adopted an agenda for a strengthened and effective CSCE through the Helsinki Decisions. These decisions will be implemented fully and in good faith.

44. We entrust the Council with the further steps which may be required to implement them. The Council may adopt any amendment to the decisions which it may deem appropriate.

45. The full text of the Helsinki Document will be published in each participating State, which will make it known as widely as possible.

46. The Government of Finland is requested to transmit to the Secretary-General of the United Nations the text of the Helsinki Document, which is not eligible for registration under Article 102 of the Charter of the United Nations, with a view to its circulation to all the members of the Organization as an official document of the United Nations.

47. The next review conference will be held in Budapest in 1994 on the basis of modalities of the Helsinki Follow-up Meeting, *mutatis mutandis*, to be further specified by the CSO which may decide to organize a special preparatory meeting.

Helsinki, 10 July 1992

IV

RELATIONS WITH INTERNATIONAL ORGANIZATIONS, RELATIONS WITH NON-PARTICIPATING STATES, ROLE OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

(1) The new tasks before the CSCE require clearer relations and closer contacts with international organizations, in particular with the United Nations, and non-participating States. The CSCE remains at the same time a process whose activities go far beyond formal relations among governments to involve citizens and societies of the participating States. Successful efforts to build a lasting peaceful and democratic order and to manage the process of change require more structured and substantive input from groups, individuals, States and organizations outside the CSCE process.

To this end, the participating States have decided as follows:

Relations with international organizations

(2) The participating States, reaffirming their commitments to the Charter of the United Nations as subscribed to by them, declare their understanding that the CSCE is a regional arrangement in the sense of Chapter VIII of the Charter of the United Nations and as such provides an important link between European and global security. The rights and responsibilities of the United Nations Security Council remain unaffected in their entirety.

(3) Recalling the relevant decisions of the Prague Document, the participating States will improve contact and practical co-operation with appropriate international organizations.

(4) They may accordingly agree to invite presentations by those international organizations and institutions mentioned in the Prague Document and others, as appropriate.

(5) Those organizations, institutions and others as agreed may be invited to attend CSCE meetings and seminars as guests of honour with appropriate name-plates.

(6) They will make full use of the information exchange under paragraph 44 of the Prague Document.

Relations with non-participating Mediterranean States

(7) Recalling the provisions of the Final Act and other CSCE relevant documents and consistent with established practice, the non-participating Mediterranean States will continue to be invited to contribute to CSCE activities.

(8) Measures to widen the scope of co-operation with non-participating Mediterranean States are set forth in Chapter X.

Relations with non-participating States

(9) In accordance with paragraph 45 of the Prague Document, the participating States intend to deepen their co-operation and develop a substantial relationship with non-participating States, such as Japan, which display an interest in the CSCE, share its principles and objectives, and are actively engaged in European co-operation through relevant organizations.

(10) To this end, Japan will be invited to attend CSCE meetings, including those of Heads of State and Government, the CSCE Council, the Committee of Senior Officials and other appropriate CSCE bodies which consider specific topics of expanded consultation and co-operation.

(11) Representatives of Japan may contribute to such meetings, without participating in the preparation and adoption of decisions, on subjects in which Japan has a direct interest and/or wishes to co-operate actively with the CSCE.

Increasing openness of CSCE activities, promoting understanding of the CSCE, expanding the role of NGOs

(12) The participating States will increase the openness of the CSCE institutions and structures and ensure wide dissemination of information on the CSCE.

(13) To this end:

- the Chairman-in-Office assisted by the CSCE Secretariat will arrange briefings on the political consultation process;

- the CSCE institutions will, within existing budgets, provide information to the public and organize public briefings on their activities;

- the Secretariat will facilitate the flow of information to and contacts with the media, bearing in mind that CSCE policy issues remain the responsibility of participating States.

(14) The participating States will provide opportunities for the increased involvement of non-governmental organizations in CSCE activities.

(15) They will, accordingly:

- apply to all CSCE meetings the guidelines previously agreed for NGO access to certain CSCE meetings;

- make open to NGOs all plenary meetings of review conferences, ODIHR seminars, workshops and meetings, the CSO when meeting as the Economic Forum, and human rights implementation meetings, as well as other expert meetings. In addition each meeting may decide to open some other sessions to attendance by NGOs;

- instruct Directors of CSCE institutions and Executive Secretaries of CSCE meetings to designate an "NGO liaison person" from among their staff;
  - designate, as appropriate, one member of their Foreign Ministries and a member of their delegations to CSCE meetings to be responsible for NGO liaison;

- promote contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions between CSCE meetings;

- facilitate during CSCE meetings informal discussion meetings between representatives of participating States and of NGOs;

- encourage written presentations by NGOs to CSCE institutions and meetings, titles of which may be kept and provided to the participating States upon request;

- provide encouragement to NGOs organizing seminars on CSCE-related issues;

- notify NGOs through the CSCE institutions of the dates of future CSCE meetings, together with an indication, when possible, of the subjects to be addressed, as well as, upon request, the activations of CSCE mechanisms which have been made known to all participating States.

(16) The above provisions will not be applied to persons or organizations which resort to the use of violence or publicly condone terrorism or the use of violence.

(17) The participating States will use all appropriate means to disseminate as widely as possible within their societies knowledge of the CSCE, its principles, commitments and activities.

(18) The concept of a CSCE Prize will be considered.

VI

THE HUMAN DIMENSION

(1) The participating States conducted a useful review of implementation of CSCE commitments in the Human Dimension. They based their discussion on the new community of values established among them, as set forth by the Charter of Paris for a New Europe and developed by the new standards created within the CSCE in recent years. They noted major progress in complying with Human Dimension commitments, but recognized developments of serious concern and thus the need for further improvement.

(2) The participating States express their strong determination to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote the principles of democracy and, in this regard, to build, strengthen and protect democratic institutions, as well as to promote tolerance throughout society. To these ends, they will broaden the operational framework of the CSCE, including by further enhancing the ODIHR, so that information, ideas, and concerns can be exchanged in a more concrete and meaningful way, including as an early warning of tension and potential conflict. In doing so, they will focus their attention on topics in the Human Dimension of particular importance. They will therefore keep the strengthening of the Human Dimension under constant consideration, especially in a time of change.

(3) In this regard, the participating States adopt the following:

Framework for monitoring compliance with CSCE commitments and for promoting co-operation in the human dimension

(4) In order to strengthen and monitor compliance with CSCE commitments as well as to promote progress in the Human Dimension, the participating States agree to enhance the framework of their co-operation and to this end decide the following:

Enhanced role of the ODIHR

(5) Under the general guidance of the CSO and in addition to its existing tasks as set out in the Charter of Paris for a New Europe and in the Prague Document on Further Development of CSCE Institutions and Structures, the ODIHR will, as the main institution of the Human Dimension:

(5a) assist the monitoring of implementation of commitments in the Human Dimension by:

- serving as a venue for bilateral meetings under paragraph 2 and as a channel for information under paragraph 3 of the Human Dimension Mechanism as set out in the Vienna Concluding Document;

- receiving any comments from States visited by CSCE missions of relevance to the Human Dimension other than those under the Human Dimension Mechanism; it will transmit the report of those missions as well as eventual

comments to all participating States with a view to discussion at the next implementation meeting or review conference;

- participating in or undertaking missions when instructed by the Council or the CSO;

(5b) act as a clearing-house for information on:

- a state of public emergency according to paragraph 28.10 of the Document of the Moscow Meeting of the Conference on the Human Dimension;

- resource lists, and assistance, e.g. in the field of censuses or on democracy at a local and regional level, and the holding of national seminars on such issues;

(5c) assist other activities in the field of the Human Dimension, including the building of democratic institutions by:

- fulfilling the tasks as defined in the "Programme of co-ordinated support to recently admitted participating States";

- arranging "Seminars on the democratic process" at the request of participating States. The same procedural provisions as set out in the "Programme of co-ordinated support for recently admitted participating States" will also apply to these seminars;

- contributing, within the resources at its disposal, to the preparation of seminars at the request of one or more participating States;

- providing, as appropriate, facilities to the High Commissioner on National Minorities;

- communicating, as appropriate, with relevant international and non-governmental organizations;

- consulting and co-operating with relevant bodies of the Council of Europe and those associated with it, and examining how they can contribute, as appropriate, to the ODIHR's activities. The ODIHR will also, at the request of participating States, supply them with information about

programmes within the framework of the Council of Europe which are open to all participating States.

(6) The activities on Human Dimension issues undertaken by the ODIHR may, *inter alia*, contribute to early warning in the prevention of conflicts.

Human Dimension Mechanism

(7) In order to align the Human Dimension Mechanism with present CSCE structures and institutions the participating States decide that:

Any participating State which deems it necessary may provide information on situations and cases which have been the subject of requests under paragraphs 1 or 2 of the chapter entitled the "Human Dimension of the CSCE" of the Vienna Concluding Document or on the results of those procedures, to the participating States through the ODIHR - which can equally serve as a venue for bilateral meetings under paragraph 2 - or diplomatic channels. Such information may be discussed at Meetings of the CSO, at implementation meetings on Human Dimension issues and review conferences.

(8) Procedures concerning the covering of expenses of expert and rapporteur missions of the Human Dimension Mechanism may be considered by the next review conference in the light of experience gained.

Implementation

Implementation meetings on Human Dimension issues

(9) Every year in which a review conference does not take place, the ODIHR will organize a three-week meeting at expert-level of all participating States at its seat to review implementation of CSCE Human Dimension commitments. The meeting will perform the following tasks:

(9a) a thorough exchange of views on the implementation of Human Dimension commitments, including discussion on the information provided in accordance with paragraph 4 of the Human Dimension Mechanism and on the Human Dimension aspects of the reports of CSCE missions, as well as the consideration of ways and means of improving implementation;

(9b) an evaluation of the procedures for monitoring compliance with commitments.

(10) The implementation meeting may draw to the attention of the CSO measures to improve implementation which it deems necessary.

(11) The implementation meeting will not produce a negotiated document.

(12) Written contributions and information material will be of a non-restricted or restricted character as indicated by the submitting State.

(13) Implementation meetings will be organized to meet in formal and informal sessions. All formal sessions will be open. In addition, the participating States may decide, on a case-by-case basis, to open informal sessions.

(14) The Council of Europe, the European Commission for Democracy through Law and the European Bank for Reconstruction and Development (EBRD), as well as other relevant international organizations and institutions will be encouraged by the implementation meeting to attend and make contributions.

(15) Non-governmental organizations having relevant experience in the field of the Human Dimension are invited to make written presentations to the implementation meeting, e.g. through the ODIHR, and may be invited by the implementation meeting, on the basis of their written presentations, to address specific questions orally as appropriate.

(16) During two half days in the course of the implementation meeting no formal session will be scheduled in order to provide better opportunities for possible contacts with NGOs. To this purpose, a hall at the meeting site will be placed at the disposal of NGOs.

CSCE Human Dimension seminars

(17) Under the general guidance of the CSO, the ODIHR will organize CSCE Human Dimension seminars which will address specific questions of particular relevance to the Human Dimension and of current political concern. The CSO will establish an annual work programme including the titles and dates of such seminars. The agenda and modalities of each seminar will be approved by the CSO at the latest three months before the seminar. In doing

so, the CSO will take into account views expressed by the ODIHR. Unless otherwise decided, seminars will be held at the seat of the ODIHR and will not exceed one week. The work programme will take into account work by relevant international organizations and institutions.

(18) These seminars will be organized in an open and flexible manner. Relevant international organizations and institutions may be invited to attend and to make contributions. So may NGOs with relevant experience. Independent experts attending the seminar as members of national delegations will also be free to speak in their own capacity.

(19) CSCE seminars will be organized to meet in formal and informal sessions. All formal sessions will be open. In addition, the participating States may decide, on a case-by-case basis, to open informal sessions.

(20) CSCE seminars will not produce a negotiated document or follow-up programmes.

(21) Contributions by independent experts will be of a non-restricted character.

(22) In order to launch the new CSCE Human Dimension Seminars without delay, the participating States decide now at the Helsinki Follow-up Meeting that the ODIHR will organize the following four seminars:

- Migration
- Case Studies on National Minorities Issues: Positive Results
- Tolerance
- Free Media

These seminars will be held before 31 December 1993. The agenda and modalities of the seminars will be decided by the CSO. Seminars on migrant workers and on local democracy will be included in the first annual work programme of seminars. The financial implications of the seminar programme will be kept under consideration by the CSO.

Enhanced commitments and co-operation in the Human Dimension

National minorities

The participating States

(23) Reaffirm in the strongest terms their determination to implement in a prompt and faithful manner all their CSCE commitments, including those contained in the Vienna Concluding Document, the Copenhagen Document and the Geneva Report, regarding questions relating to national minorities and rights of persons belonging to them;

(24) Will intensify in this context their efforts to ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully, in accordance with the democratic decision-making procedures of each State, in the political, economic, social and cultural life of their countries including through democratic participation in decision-making and consultative bodies at the national, regional and local level, *inter alia*, through political parties and associations;

(25) Will continue through unilateral, bilateral and multilateral efforts to explore further avenues for more effective implementation of their relevant CSCE commitments, including those related to the protection and the creation of conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities;

(26) Will address national minority issues in a constructive manner, by peaceful means and through dialogue among all parties concerned on the basis of CSCE principles and commitments;

(27) Will refrain from resettling and condemn all attempts, by the threat or use of force, to resettle persons with the aim of changing the ethnic composition of areas within their territories;

(28) Direct the ODIHR to organize, in spring 1993, a CSCE Human Dimension Seminar on Case Studies on National Minorities Issues: Positive Results.

Indigenous populations

The participating States

(29) Noting that persons belonging to indigenous populations may have special problems in exercising their rights, agree that their CSCE commitments regarding human rights and fundamental freedoms apply fully and without discrimination to such persons.

Tolerance and non-discrimination

The participating States

(30) Express their concern over recent and flagrant manifestations of intolerance, discrimination, aggressive nationalism, xenophobia, anti-semitism and racism and stress the vital role of tolerance, understanding and co-operation in the achievement and preservation of stable democratic societies;

(31) Direct the ODIHR to organize, in autumn 1992, a CSCE Human Dimension Seminar on Tolerance;

(32) Will consider adhering to the International Convention on the Elimination of All Forms of Racial Discrimination, if they have not already done so;

(33) Will consider taking appropriate measures within their constitutional framework and in conformity with their international obligations to assure to everyone on their territory protection against discrimination on racial, ethnic and religious grounds, as well as to protect all individuals, including foreigners, against acts of violence, including on any of these grounds. Moreover, they will make full use of their domestic legal processes, including enforcement of existing laws in this regard;

(34) Will consider developing programmes to create the conditions for promoting non-discrimination and cross-cultural understanding which will focus on human rights education, grass-roots action, cross-cultural training and research;

(35) Reaffirm, in this context, the need to develop appropriate programmes addressing problems of their respective nationals belonging to Roma and other groups traditionally identified as Gypsies and to create conditions for them to have equal opportunities to participate fully in the life of society, and will consider how to co-operate to this end.

Migrant workers

The participating States

(36) Restate that human rights and fundamental freedoms are universal, that they are also enjoyed by migrant workers wherever they live and stress the

importance of implementing all CSCE commitments on migrant workers and their families lawfully residing in the participating States;

(37) Will encourage the creation of conditions to foster greater harmony in relations between migrant workers and the rest of the society of the participating State in which they lawfully reside. To this end, they will seek to offer, *inter alia*, measures to facilitate the familiarization of migrant workers and their families with the languages and social life of the respective participating State in which they lawfully reside so as to enable them to participate in the life of the society of the host country;

(38) Will, in accordance with their domestic policies, laws and international obligations seek, as appropriate, to create the conditions for promoting equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for lawfully residing and working migrant workers.

Refugees and displaced persons

The participating States

(39) Express their concern over the problem of refugees and displaced persons;

(40) Emphasize the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration;

(41) Recognize the need for international co-operation in dealing with mass flows of refugees and displaced persons;

(42) Recognize that displacement is often a result of violations of CSCE commitments, including those relating to the Human Dimension;

(43) Reaffirm the importance of existing international standards and instruments related to the protection of and assistance to refugees and will consider acceding to the Convention relating to the Status of Refugees and the Protocol, if they have not already done so;

(44) Recognize the importance of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, as well as of non-governmental organizations involved in relief work, for the protection of and assistance to refugees and displaced persons;

(45) Welcome and support unilateral, bilateral and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions;

(46) Direct the ODIHR to organize, in early 1993, a CSCE Human Dimension Seminar on Migration, Including Refugees and Displaced Persons.

International humanitarian law

The participating States

(47) Recall that international humanitarian law is based upon the inherent dignity of the human person;

(48) Will in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population;

(49) Recall that those who violate international humanitarian law are held personally accountable;

(50) Acknowledge the essential role of the International Committee of the Red Cross in promoting the implementation and development of international humanitarian law, including the Geneva Conventions and their relevant Protocols;

(51) Reaffirm their commitment to extend full support to the International Committee of the Red Cross, as well as to the Red Cross and Red Crescent Societies, and to the United Nations organizations, particularly in times of armed conflict, respect their protective emblems, prevent the misuse of these emblems and, as appropriate, exert all efforts to ensure access to the areas concerned;

(52) Commit themselves to fulfilling their obligation to teach and disseminate information about their obligations under international humanitarian law.

Democracy at a local and regional level

The participating States

(53) Will endeavour, in order to strengthen democratic participation and institution building and in developing co-operation among them, to share their respective experience on the functioning of democracy at a local and regional level, and welcome against this background the Council of Europe information and education network in this field;

(54) Will facilitate contacts and encourage various forms of co-operation between bodies at a local and regional level.

Nationality

The participating States

(55) Recognize that everyone has the right to a nationality and that no one should be deprived of his/her nationality arbitrarily;

(56) Underline that all aspects of nationality will be governed by the process of law. They will, as appropriate, take measures, consistent with their constitutional framework not to increase statelessness;

(57) Will continue within the CSCE the discussion on these issues.

Capital punishment

The participating States

(58) Confirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

Free media

The participating States

(59) Direct the ODIHR to organize a CSCE Human Dimension Seminar on Free Media, to be held in 1993. The goal of the Seminar will be to encourage the discussion, demonstration, establishment of contacts and

exchange of information between governmental representatives and media practitioners.

Education

The participating States

(60) Would welcome, in view of the importance of education as to the dissemination of the ideas of democracy, human rights and democratic institutions, especially in a period of change, the organization to this end of a seminar entitled "Education: Structures, Policies and Strategies" by the Council of Europe, open to all participating States.

Compilation of Human Dimension commitments

The participating States

(61) Welcome the drawing up of compilations of existing CSCE Human Dimension commitments in order to promote greater understanding for the implementation of these commitments.

Domestic implementation guidelines

The participating States

(62) Will promote, where appropriate, the drawing up of guidelines to assist the effective implementation of domestic legislation on human rights issues related to CSCE commitments.

Annex II

Other Key CSCE Documents

- Report to the CSCE Council from the CSCE Seminar on Democratic Institutions, Oslo, 15 November 1991

- Prague Document on Further Development of CSCE Institutions and Structures, Prague, 20 January 1992 (CSCE-Doc. 2-C/Dec.2/ Excerpts)

- Seminar on Free Media, Proposal submitted by the Delegations of the USA and Ukraine, Helsinki, 9 June 1992 (CSCE-Doc. HM/WG3/19)

Report to the CSCE Council From the CSCE Seminar of Experts on Democratic Institutions

Representatives and experts of the participating States, Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech and Slovak Federal Republic, Denmark, Estonia, Finland, France, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, European Community, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States of America and Yugoslavia, met in Oslo from 4 to 15 November 1991, in accordance with the provisions relating to the CSCE Seminar of Experts on Democratic Institutions contained in the Charter of Paris for a New Europe.

An opening address to the Seminar was delivered by H.E. Gro Harlem Brundtland, Prime Minister of Norway, on behalf of the host country.

Opening statements were made by representatives of the participating States. Contributions to the Seminar were made by the Secretary General of the Council of Europe and the President of the European Commission for Democracy through Law. The Foreign Minister of the host country, Mr. Thorvald Stoltenberg, delivered a closing address to the Seminar.

The participating States recalled their commitment to implement fully the provisions relating to human rights, democracy and the rule of law in the Final Act of the Conference on Security and Co-operation in Europe, the Charter of Paris for a New Europe and other CSCE documents, including, in particular, the Documents of the Copenhagen and Moscow Meetings of the Conference on the Human Dimension.

Proceeding from the commitments contained in these documents, experts had a thorough discussion of ways and means of consolidating and strengthening viable democratic institutions in participating States, including comparative studies of legislation on human rights and fundamental freedoms.

The representatives of the participating States expressed their profound gratitude to the people and Government of Norway for the excellent organization of the Seminar and the warm hospitality extended to the delegations which participated in the Seminar.

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Representatives recalled that the mandate of the Oslo Seminar, as set out in Annex II of the Charter of Paris, required the Seminar to provide a summing up of its discussions for transmittal to the Council. They took account of the participation in the Seminar of experts not representing governments, and of the fact that the contributions of these experts were of particular value to all participants. In order to provide an adequate record of discussions, and to ensure that all views were adequately reflected, this Report, which does not purport to express any new commitments on the part of participating States, sets out the following Summary of Discussions as a record of its work:

I

In the discussions of experts, suggestions for practical measures to strengthen democratic institutions and the rule of law were set out. Experts also formulated their assessments of the political, economic, social and legal factors which influence the operation and effectiveness of democratic government and its institutions.

In this context, it was recalled that the participating States have already accepted high standards of human rights, fundamental freedoms, pluralistic democracy based on periodic and free elections by universal and equal suffrage, and the rule of law. It was broadly recognized that democratic government depended on the ability of democratic institutions to function effectively. In order to do so, the structure and authority of institutions needed to be backed by informed and active public support and broadly based acceptance in the society which they serve. A democratic culture was a necessary element for the functioning of all democratic governments, and required permanent encouragement. Where a democratic tradition of long duration has not had the chance to develop, or had been interrupted, it would be necessary to develop a democratic culture, on the local, regional and national level, in order to sustain new democratic institutions. It was noted that the reciprocal relationship between international human rights norms and national practices was important in this regard. The growth of a democratic culture can be fostered by society at many levels: in basic civic education, in the media, within religious and civic movements and organizations, in political parties, in the professions, notably the legal profession, in the judiciary, in public administration, within the armed forces and the police by securing the absolute allegiance to the civil power and democratic government.

It was also broadly recognized that the independence and authority of the judiciary was a crucial element in safeguarding the rule of law and securing effective implementation of human rights and fundamental freedoms. An independent judiciary serves to uphold the integrity of other democratic institutions, reinforce their effectiveness, and prevent abuse of power.

It was also broadly recognized that, along with the development of democratic institutions and political procedures, the reform of private law was essential in States where radical democratic reforms are being introduced. A legal foundation had to be provided for a functioning economy, securing the rights of the individual to engage in constructive economic activity, including the right to own property and to dispose of it under the law, alone or in association with others.

It was likewise broadly recognized that the ability of a society to satisfy the basic material needs of its population was important for the development of the democratic political process, and of a democratic culture based on shared values and goals.

II

In discussing the question of constitutional reforms, experts drew on national experiences. They noted that States choose different means for the implementation of democratic government, in response to their particular characteristics and traditions and to the circumstances of their constitutional history. As long as the core values of democratic government were assured, no single overall approach to the institutions and procedures of democratic government could be considered as having universal validity.

The issue of constitutional reforms was discussed from a variety of points of view, covering the technical aspects of the reform process as well as questions of substance. On matters of substance, exchanges concentrated on the separation of powers, and on constitutional or statutory guarantees for human rights and fundamental freedoms.

Particular emphasis was given in the discussions of the meeting to the ongoing efforts of the new democracies to create a political and legal infrastructure assuring the realization of pluralist democracy, human rights and the rule of law. In that context, a number of requirements, often conflicting, were identified.

It was a central theme that the new democracies are faced contemporaneously with an urgent need to mark the break with the former non-democratic system in an appropriate legal form, to assure stability in institutions, and effective implementation of policies as well as sound and fair administrative practices.

It was recognized that sweeping constitutional reforms touch the very foundations of a nation, and therefore warrant thorough analysis and discussion. On the other hand, fundamental political changes called for a swift follow-up in terms of constitutional reform. A decision on a definitive new constitution, adopted before a society has fully clarified and developed its vision of democratic government, might have to be reconsidered before long. Experts considered that in such a situation, a balance might be found, by providing for constitutional amendment procedures that allow for

modifications, while entrenching certain basic provisions such as those relating to human rights, fundamental freedoms and the rule of law.

Experts discussed the composition and nature of the body empowered to draft a new constitution and the modalities for its adoption. A general view emerged to the effect that the drafting body must reflect the views of the political forces in order to bring about a national consensus. A new constitution should be adopted-in a manner to ensure legitimacy.

The utility or admissibility of granting exceptional powers to the executive branch during a period of transition, in order to carry out unpopular but necessary economic reforms, was also considered. While some experts felt that such exceptional powers might be justified in order to create the long-term conditions for a stable, viable democracy, others were of the opinion that such measures would weaken the development of a democratic culture. In any event, conditions for granting exceptional powers should be defined, and their exercise subject to control as appropriate.

Direct participation of the people in important political decisions through plebiscites or referenda was highlighted as a means of enhancing the interest and involvement of the electorate in public affairs. As with any democratic process, popular consultation should be carried out with appropriate safeguards.

The extent to which institutions of the old totalitarian regime could be adapted to serve in a new democratic framework gave rise to diverging views. While the need for some continuity was recognized it was underlined that the identification of institutions with totalitarian rule might undermine their legitimacy even after a restructuring of such bodies had taken place.

In the discussion of the division of power between the legislative, executive and judicial authorities, it was noted that, although the classical doctrine of the separation of powers in its pure form was implemented mainly in presidential systems, its essence was also reflected in the practices of many other political systems.

It was also emphasized that separation of functions between the trial judge and the prosecuting authority was essential and required adequate guarantees. The strengthening of the role of the judiciary, and the creation of a well-trained and independent body of judges, was particularly important in those participating States emerging from a totalitarian past. Appointment procedures, remuneration and security of office were characterized as important factors.

In the context of constitutional reform, reference was made to the utility of vertical decentralization and division of the functions of government on a federal, regional and local basis for a wide range of purposes. Numerous forms were available to take account of historical, regional, linguistic or ethnic distinctions. Administrative decentralization, development of governmental functions on a regional basis, and reinforcement and reform of local government institutions might in varying ways respond to the needs of groups, including national minorities.

Attention was drawn to the difficulties that arise when coalition governments change frequently, due to a fragmented parliament. One way of avoiding instability was to admit noconfidence votes only when the parties behind such a vote are in a position to offer an alternative government.

Experts discussed the relationship between the organization of elections and of political parties, and the functioning of democratic institutions. They saw a dilemma between an ideal of representation of parties in Parliament directly on the basis of voting figures, and the need for stable and effective government.

Proportional election systems were well suited to ensure mathematically correct representation of the electorate. At the same time such systems entailed the possibility of a proliferation of political parties and ensuing difficulties in establishing parliamentary majorities. This in turn might lead to weak and unstable governments. The introduction of thresholds and the adjustment of mathematical methods applied in determining representation could help alleviate this problem. Electoral systems based on single-seat constituencies were seen as more likely to produce stable parliamentary majorities, but at the risk of leaving segments of the population unrepresented.

It was pointed out that rules relating to the organization of elections are also important for the resolution of electoral disputes and drawing or redrawing of electoral constituencies. Participating States apply different systems in this respect, some recognizing the authority of their legislature while others accept the competence of the judiciary. A third system referred to was the establishment of a special judicial body with sufficient expertise in electoral matters and completely immune from the influence of the legislative and executive branches.

It was underlined that representative government now confronted a situation where the media, interest groups, spontaneous social movements and single-issue pressure groups have taken over some of the functions previously performed by political parties. At the same time, the level of electoral participation in many established democracies had diminished. There were differing views on the implications of such changes for the environment in which democratic institutions operated. It was noted that non-governmental organizations and new approaches by the media to the political process might play a constructive role, by activating voters and by making the political parties aware of the concerns of voters.

Reference was made to the necessity for democracies to deal with the anti-democratic forces in society without doing violence to democratic procedures and the ideology on which democratic culture depended.

Extensive reference was made to the leading role played in many emerging democracies by broad, heterogeneous mass movements, united and inspired by their experience in confronting totalitarian regimes. The point was made that such movements may have to adjust in order to continue to play an active political role in post-revolutionary transition to democracy.

It was suggested that the process towards pluralism in former one-party States might require a codification of the role of political parties. Legislation was required to determine the conditions under which political parties were to operate, seek financial support and meet certain requirements, e.g. the readiness to contest elections. It was noted that members of political parties should not be barred from serving as judges or in public administration.

It was noted that while voluntary organizations present themselves under a variety of forms, they have many features in common. They are set up by groups of individuals pursuing common interests of a professional, economic or non-profit nature. Distinctions between them could be on the basis of criteria such as the degree of organization, size, complexity and the functions performed.

Although voluntary organizations might not primarily aim at exercising political responsibilities, they could help articulate citizens' demands on specific issues. They could serve to encourage diversity and the growth of different opinions and facilitate the integration of groups. It was underlined that voluntary organizations provided democratic societies with early-warning systems against government interference and anti-democratic activities. Many voluntary organizations played a prominent role in economic life, providing in some cases a complement to market forces. Many experts pointed out that public authorities should refrain from bureaucratic control.

Some pitfalls for voluntary organizations were pointed out: centralization of decision-making and co-option by State authorities. Reference was also made to the fact that narrow, well-defined interests are more likely to form the basis for voluntary organizations than more general ones.

Experts identified some trends in modern society which influence the working conditions for voluntary organizations and trade unions. In some countries, one could observe a certain tendency of voluntary organizations to withdraw from participation in consultative State organs, and the loosening of ties between trade unions and political parties. The effects thereof on civil society were not yet clear.

While noting the vital role of voluntary organizations for the functioning of democratic institutions, experts also referred to the question of their democratic legitimacy. Only direct, secret and universal suffrage could guarantee a democratic process. But openness and democratic control could not always be taken for granted in voluntary organizations. As the role of political parties had diminished in many countries, the relationship between parliaments and voluntary organizations had become more important.

It was emphasized that a democratic form of government requires freedom of expression, without which its citizens cannot obtain the information necessary for participation in political and public life. A diverse and independent press and broadcasting system has a vital role to play in any democracy. The question of imposing certain regulations on the media was discussed. It was pointed out that some protection was required against

excesses of the press. At the same time, it was underlined that freedom of expression should only be subject to such restrictions as are prescribed by law and are necessary in a democratic society. Some participants pointed to the need for high ethical standards in the media and related this to the system of recruitment and training of journalists. It was, however, underlined that both elitist and popular newspapers had the right to exist.

Ideally, economic conditions should guarantee complete editorial independence. It was, however, pointed out that State intervention could sometimes become necessary in order to protect the diversity of the press. In this context, it was mentioned that one should also take into account that the press and broadcasting systems are parts of the cultural identity of a country.

In considering comparative studies of legislation in the area of human rights and fundamental freedoms, attention was drawn to the interrelationship between the protection of those rights, and the effective functioning of democratic political and judicial institutions.

Particular attention was given to the question of national implementation of international human rights instruments. Direct incorporation of such instruments as national legislation was mentioned as one form of national implementation. Another option would be to transform the provisions of international instruments into national legislation. It was pointed out that in some participating States this was already being realized by the jurisprudence of the national judiciary. In this connection, it was emphasized that it was the responsibility of each State to give full domestic effect to its international human rights obligations, irrespective of the means of implementation chosen.

The view was expressed that the national implementation of international human rights obligations requires the existence of effective domestic legal remedies and instruments for controlling public administration.

There was a discussion of the role of national institutions for the promotion and protection of human rights. It was pointed out that, in addition to the ordinary court system, including administrative courts, such institutions could comprise constitutional courts, national human rights commissions, complaints commissions, Ombudsmen or mediators.

In the experience of many experts, the institution of Ombudsman has proved useful in dealing with administrative abuse. By examining the legality of administrative acts, it has a complementary function to the courts. In this way, confidence in the rule of law is strengthened. The supervisory functions of the Ombudsman institution promote fair administrative practices and encourage confidence in government.

Reference was made to the importance of openness in public administration including access to information and documents, and adequate complaints procedures. Recourse to international human rights bodies was mentioned as complementing national complaints and review procedures. Provisions for legal assistance at all levels would be an important element in securing the successful operation of such complaints and review procedures.

The importance of an adequate code of criminal procedure was emphasized as a means of implementing human rights. In particular, attention was drawn to international standards for treatment during detention. It was considered that practical forms of international co-operation in this field could be of direct utility in the reorganization of prison services and penal institutions. Particular attention should be given to national implementation of international instruments against torture or inhuman and degrading treatment. The importance of training those responsible for dealing with detained persons, in particular police, prison officials and personnel, was also pointed out in this connection.

Economic and social rights were discussed. The point was made that there is a need to make a distinction between those rights which are enforceable before the courts, and provisions which should be regarded as expressing policy goals. It was also pointed out that the effective functioning of a market economy would not be incompatible with regulation of the economy or State provision for basic material needs for its citizens, and environmental safeguards.

It was pointed out that modern society would in some way have to deal with problems arising out of changes in technology, particularly in the fields of data processing and bio-technology. This was an area where international exchanges of information, policy studies, and proposed and adopted legislation for regulation to prevent misuse would be useful.

Reference was also made to the need to ensure adequate opportunity for participation of both men and women in all aspects of political and public life, through appropriate legislation and supervisory agencies.

III

The experts recognized that there is a need to strengthen CSCE co-operation in the fields of human rights, democratic institutions and the rule of law.

A widely held view among the experts was that one of the most important functions of CSCE co-operation in these fields would be to establish contacts between governments, institutions and organizations seeking expertise or assistance and counterparts that are in a position to provide such resources. The need to assure co-ordination of activities with a view to strengthening democratic institutions was underlined.

Participants noted in this context the support that has been expressed for the proposal of transforming the CSCE Office for Free Elections into a broadly focused office of democratic institutions. Paragraph 30 of the Document of the Moscow Meeting of the Conference on the Human Dimension was referred to in this connection.

Participants, while noting that any revision of the mandate of the Office for Free Elections would have to be decided by the appropriate body, expressed views to indicate possible additional functions a CSCE office of democratic

institutions could serve. At this stage, certain experts made the following points:

- an office of democratic institutions could serve as the institutional framework for sharing and exchanging information on available technical assistance, expertise and national and international programmes aimed at assisting the new democracies in their institution-building;
- it could facilitate contacts between those offering such resources and those wishing to make use of them, thereby serving as a clearing-house and contact point and a facilitator for co-operative projects;
- it could establish and maintain a data-base of such resources and services;
- it could establish contacts with non-governmental organizations active in the field of democratic institutionbuilding, with a view to enabling interested participating States to make use of their extensive resources and expertise;
- it could facilitate co-operation in training and education in disciplines relevant to democratic institutions;
- it could organize meetings and seminars on subjects related to the building and revitalization of democratic institutions, at the request of participating States.

The point was made by many participants that an office of democratic institutions should work closely with other institutions active in the field of democratic institution-building in order to avoid duplication of work. In this connection, certain experts underlined the relevant character of the role of the Council of Europe in the areas of the rule of law and the defence of human rights and the importance of taking account of its work, experience and extensive resources, particularly in the provision of expertise on democratic institutions, in the arrangement of seminars and programmes on democratic practice, and as a source of information about activities, resources and needs in participating States, as well as that of the European Commission for Democracy through Law. Effective liaison between a CSCE office of democratic institutions and these institutions should be ensured.

It was suggested that the establishment of national centres for democratic institutions could facilitate the further strengthening of such democracy, especially in countries carrying out radical democratic reforms. Such national centres might maintain links to a CSCE office of democratic institutions.

IV

In the course of the Seminar a number of practical proposals for future co-operation with a view to strengthening democratic institutions were made. The hope was expressed that these could become the object of follow-up action

in a bilateral or multilateral context, as appropriate. In this connection, reference was also made to programmes within the framework of the Council of Europe.

The following specific possibilities were mentioned, bearing in mind the need to develop them further:

-Training programmes and exchanges of personnel
-Co-operation on education for democracy and human rights
-Resource list of experts on democratic institutions
-Seminars, informal workshops and round tables on democratic institutions
-Scholarship programmes for students and instructors
-Funding of higher education
-Ombudsmen's meetings and seminars
-Co-operation between local and regional authorities
-Involving NGOs in practical co-operation
-Co-operation in the training of personnel dealing with detained individuals
-Exchanges on modalities for free legal aid.

Oslo, 15 November 1991

Prague Document on Further Development of CSCE Institutions and Structures

Prague, 20 January 1992 (CSCE-Doc. 2-C/Dec. 2/ Excerpts)

III Human dimension

6. The Ministers agreed that monitoring and promoting progress in the human dimension remains a key function of the CSCE.

7. Issues related to the human dimension will therefore be considered by the Council or the Committee of Senior Officials whenever necessary.

8. In addition, meetings of a short duration may also be decided upon by the Committee of Senior Officials to address clearly defined issues. Results of such meetings will be submitted to the Council through the Committee of Senior Officials for consideration or decisions as required.

9. In order to extend practical co-operation among participating States in the human dimension, the Ministers decided to give additional functions to the Office for Free Elections which will henceforth be called the Office for Democratic Institutions and Human Rights.

10. Under the general guidance of the CSO, the Office should, inter alia:

- organize a short CSCE meeting at the seat of the Office for Democratic Institutions and Human Rights to address implementation of CSCE human dimension commitments every year in which a follow-up meeting does not take place. The Helsinki Follow-up Meeting will work out the organizational modalities for such meetings;
- serve as an institutional framework for sharing and exchanging information on available technical assistance, expertise, and national and international programmes aimed at assisting the new democracies in their institution-building;
- facilitate contacts between those offering such resources and those wishing to make use of them;
- develop co-operation with the Council of Europe in order to make use of its database of such resources and services;

- establish contacts with non-governmental organizations active in the field of democratic institution-building, with a view to enabling interested participating States to make use of their extensive resources and expertise;
- facilitate co-operation in training and education in disciplines relevant to democratic institutions;
- organize meetings and seminars among all participating States on subjects related to the building and revitalization of democratic institutions, such as a short seminar on free media and, at an appropriate time, one on migration.

These meetings and seminars will be held in Warsaw unless otherwise decided.

11. In order to avoid duplication of work specially in the fields enumerated above, the Ministers directed the Office to work closely with other institutions active in the field of democratic institution-building and human rights, particularly the Council of Europe and the European Commission for Democracy through Law.

12. The CSO will on an annual basis examine the need for meetings and seminars on the human dimension and democratic institutions and will establish a work programme.

13. The Ministers requested the Helsinki Follow-up Meeting to further specify the task of the Warsaw Office and to decide how the human dimension activities of the CSCE may be further carried forward.

14. The Office for Democratic Institutions and Human Rights is designated as the CSCE institution charged with the tasks in connection with expert and rapporteur missions according to the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE.

15. The Office for Democratic Institutions and Human Rights will be connected to the CSCE communications network.

Safeguarding human rights, democracy and the rule of law

16. The Council decided, in order to develop further the CSCE's capability to safeguard human rights, democracy and the rule of law through peaceful means, that appropriate action may be taken by the Council or the Committee of Senior Officials, if necessary in the absence of the consent of the State concerned, in cases of clear, gross and uncorrected violations of relevant CSCE commitments. Such actions would consist of political declarations or other

political steps to apply outside the territory of the State concerned. This decision is without prejudice to existing CSCE mechanisms.

17. The Council requested the Helsinki Follow-up Meeting to consider further modalities in applying this decision.

VIII Non-Governmental Organizations

42. The Council requests the Helsinki Follow-up Meeting to strengthen relations between the CSCE and non-governmental organizations, in order to increase the role of non-governmental organizations in implementing CSCE goals and commitments. In particular, the Follow-up Meeting will develop opportunities and procedures for meaningful non-governmental organization involvement in the CSCE and possibilities for non-governmental organizations to communicate with CSCE structures and institutions, recalling inter alia the texts on non-governmental organizations agreed by the Sofia and Moscow Meetings and by the Oslo Seminar.

Proposal Submitted by the Delegations of the United States Of America and Ukraine

Seminar on Free Media, CSCE/HM/WG3/19; Helsinki, 9 June 1992

The participating States,

Reaffirming the right to freedom of expression, including the right to hold opinions and to secure and impart information and ideas without interference,

Recognizing that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding freedom of expression,

Recognizing further that the functioning of such independent media can be fostered in many important ways, including by efforts helping to ensure that:

- governments refrain from any censorship of journalists or other persons that is designed to stifle the fundamental right to freedom of expression;
- governments not impose unreasonable restrictions on access by journalists and other persons to newsprint, printing facilities, distribution systems, broadcast media, and operation of news agencies; governments not impose restrictions on entry into the field of journalism or over its practice through arbitrary or capricious licensing or other certification proposals;
- journalists, like all persons, are accorded full protection of the law to be secure in their persons;
- journalists working in war zones are treated as civilians and enjoy the rights and protections accorded other civilians; and

Having agreed to convene a short seminar on free media, to be organized in autumn 1992 by the Office for Democratic Institutions and Human Rights,

Agree to the following arrangements for this seminar:

The one-week session will dispense with formal presentations and the negotiation of any concluding document, in favour of short presentations by media practitioners and considerable structured and unstructured opportunities for discussion, demonstration, establishment of contacts, and exchange of information;

Participating States are encouraged to build their delegations around media practitioners, both governmental and non-governmental,

The proceedings may be summarized for the record after the meeting by The agenda will consist of the following items:

-Government Media in a Democracy
-Relationship between Independent and Government Media
-Ethics in Journalism
-Media in a Market Economy
-Equitable Broadcast Spectrum Analysis
-Clearing-House Role for the ODIHR

Specific modalities will he arranged by the ODIHR.

Annex III

CSCE AND INFORMATION

Documentation of the Seminar

Resolution:

The participants in the Seminar of Experts on CSCE and Information: Mass Media in the 1990s, organized by the International Association for Mass Communication Research (IAMCR) held at Tampere and Helsinki, April 24-27, 1992,

Recognizing the important function of the mass media, both nationally and transnationally, in the daily lives of millions of European citizens;

Recognizing the important and far-reaching changes that are presently taking place in the European media landscape;

Recognizing the need to protect in these changes the fundamental rights and freedoms of individuals and the process towards a genuine democracy;

Recognizing the importance of the media in the area of the CSCE mandate on security and conflict resolution;

Recognizing the request of the Second Meeting of the CSCE Council (Prague document on Further Development of CSCE Institutions and Structures; section VIII, para 42) that the Follow-up Meeting develops opportunities and procedures for meaningful non-governmental organization involvement in the CSCE and possibilities for non-governmental organizations to communicate with CSCE structures and institutions;

Recommend that the CSCE - before adopting formal policy instruments in the field of information - engages in a process of consultation with the pertinent non-governmental organizations representating working journalists, employers in media enterprises, the academic community in communication research and education, as well as civic associations involved in cultural environment issues;

Recommend that the CSCE notes the readiness of the International Association for Mass Communication Research, an international non-governmental organization (with status A relationship with Unesco) to offer substantial input into the CSCE process in the information field;

Recommend that these consultations be conducted in close cooperation with the CSCE Office of Democratic Institutions and Human Rights.

Summary Report

A seminar of experts was held in Tampere on 25 and 26 April 1992, organised by the University of Tampere, in cooperation with the International Association for Mass Communication Research (IAMCR) and the Finnish Association for Mass Communication Research. The seminar was sponsored by the University of Tampere, the Finnish Ministry of Education and Culture, YLE (the Finnish Broadcasting Company) and Tampere City Council. 37 people were present, 14 of them from outside Finland. A list of participants and the programme details are appended. The Rector of the University of Tampere welcomed the delegates and opened the proceedings.

Session One

Professor Kaarle Nordenstreng, in the chair, began the seminar by stressing the importance of information to the CSCE process. All participants recognised the right to communicate. It was now necessary to discuss: 1) the independence of the media in East-Central Europe; 2) the communication infrastructure; 3) problems of commercialisation of the media and the question of foreign control; 4) attempts to use the media for the purposes of extreme nationalism.

Professor Cees Hamelink gave a keynote address in which he proposed to discuss 'Utopian thinking', by which he meant taking human rights seriously as the starting point of the discussion of communication. He gave three reasons for applying a moral and legal framework to the mass media: 1) they are pervasive in the daily lives of citizens and are the chief means of information about the world; 2) media structures are being commercialised and audiences are being made into commodities for advertisers; 3) citizens are excluded from the policy-making processes, which are dominated by states and large

corporate forces. In this context there is a discrepancy between the idea of human rights and the actual performance. The basic norms of human rights need to be rethought: 1) Freedom. This is today restricted to a negative interpretation. It needs to be developed in a positive direction; 2) Equality. Equal treatment of unequals is itself unequal and always injurious to the poor. Perhaps inequality of treatment needs to be reconsidered. Freedom and equality need to be thought about together as the freedom of everyone to enjoy equal self-development. These extended notions of rights are under threat from states and large corporations. They need to be defended by a development and extension of 'civil society' -- voluntary organisations of citizens etc.. Strong human rights need a media based in civil society for their realization and this civil society needs to be defended against both the state and economic forces.

Ms Halliki Harro spoke of the problems faced in the Baltic countries, stressing the lack of knowledge amongst citizens. She said that the media should deliver unbiased information but that, for example, there was still no legal public access to official documents in Estonia. Alongside such a law, citizens needed to start actively exercising their rights. The new democracies were also particularly vulnerable to the diffusion of Western mass culture. Because citizens were so long denied access to this culture, they have an 'immuno-deficiency' against it and are in danger of a kind of cultural AIDS.

During the ensuing discussion, there was a debate about the question of mass culture. One view was that it was rubbish against which citizens should be protected. Another held that it was not so easy to be sure what was rubbish and that any 'protection' carried dangers of paternalism. All were agreed that it was important to ensure that there was an adequate supply of high quality information and entertainment for those citizens who wished to enjoy it. The need for a plurality of media was also stressed.

Session Two

Mr Christian Constantinescu illustrated the problems faced by journalists in Romania since 1989. He identified the continued existence of old power structures, inexperience of journalists, lack of resources and an unresolved legal framework for television as important obstacles to the development of responsible journalism.

Dr Colin Sparks discussed the 'Wende' in the former DDR. Many journalists felt that they had been very restricted in the days of SED domination. They had then experienced a period of great freedom when they could for the first time exercise free and responsible journalism. Now that the press was largely owned by big business, there was a sense that many of the new freedoms had been lost

and that journalists were once again subordinate to the powerful. The shift from state control to market control was not simply a passage from unfreedom to freedom. There were many pressures on journalists in all commercial systems which in various ways prevented them from acting responsibly towards their audiences. In order to defend themselves, journalists need to have a sense of professional ethics. He argued that journalism is not a true profession like medicine. To implement such codes against the power of employers, journalists needed independent trade unions to negotiate collectively.

During the discussion it was agreed that journalists in commercial systems experienced pressures but different views were expressed on the best way to defend their freedom. One view was that the legal framework expressed in the European Convention on Human Rights was adequate from the point of view of state interference. Another was that the funding of alternative free media by the state was the best method. Dr Sparks argued that states were primarily interested in political control, employers were primarily interested in profits, only journalists were primarily interested in press freedom and only they had identical interests with the citizens.

Session Three

Professor Dr Wolfgang Kleinwächter discussed the emergence of a dual system of broadcasting from the Atlantic to the Urals, comprising both commercial and public service elements. In Central-East Europe the old state broadcasting organizations were trying to evolve towards public service ideals. The new broadcasting laws were often the source of sharp debates, over for example who controlled nominations to the governing boards. There were also everywhere great financial problems. Compared with the West, there was comparatively greater diversity amongst commercial media, particularly radio, where there had been between 5 and 600 initiatives. In the case of commercial TV, local and regional companies are seeking sources of capital and foreign companies are seeking access to frequencies. Decisions as to who controlled frequency allocation were very important and contentious.

Professor Yassen Zassoursky said that in Russia there was still state regulation and market regulation. A free press was established in 1917 and suspended 'until the time was right' in 1918. The time was right in 1990, when the new press law was passed. Since 1985 there has been de facto press freedom but now it had a legal basis. There is a wide range of papers from monarchist to anarchist. There are many new radio stations, for example one run by Moscow University School of Journalism which played an important role in the defeat of the August 1991 coup. There have been very great economic problems and

the circulations of many papers have fallen as prices - both of paper etc. and to the consumer - have risen sharply. There are still government pressures and the state still controls the majority of printing concerns and the distributor. The main pressure has been that of bankruptcy, for example Pravda had to suspend publication for some time for economic reasons. There is a great lack of competence in economic management of newspapers. There is an urgent need to resolve the economic problems of the press. The law on the audio-visual industries is still under discussion and it is proving very difficult to separate the media from the state.

Professor Dirk Voorhoof said that all are agreed on the need for press freedom. This meant a different thing today than when it was formulated. It developed as a negative freedom from government control and was applied to small-scale media production. The classical theory no longer works. The free market does not, in reality, provide the variety that theory prescribes and there was always some state regulation. The modern state now has a welfare role and has the duty to correct the shortcomings of the market. Human rights now depend upon state intervention. Press freedom is a social, collective right. The right to free expression has also expanded to include the right to information. Today state regulation is not identical with censorship. There are, under the European Convention on Human Rights, many kinds of recognised intervention: restrictions on advertising, merger legislation, various kinds of state aid and self-regulation. Article 10 has a double character. There is the need for states to abstain and the need to take positive action. Case law under this Convention tends to support positive intervention.

In the discussion the relationship between the EC and the Council of Europe was raised in the context of the difference between a purely economic approach to the mass media and one which began from considerations of human rights and culture.

Session Four

Dr Zoltan Jakab questioned whether a dual system of broadcasting was emerging across Europe, or whether there would be a new division. He asked whether it was realistic to think that the old state systems were evolving towards public service models and, if so, could they survive in the new competitive environment. Secondly, he asked whether it was realistic to assume that there will be a strong commercial system and if so, what would be its capital base and what kinds of programmes would it carry. Thirdly asked whether some countries might follow a quite different path. He was sceptical as to a dual system. It was possible that the old state systems might evolve into mouthpieces for autocratic political regimes not subject to regular

governmental change. Viable commercial radio and TV might not be possible and there was certainly strong pressure to license foreign companies who did have the capital. Public services broadcasting was really an 'ideal typical' model which depended upon unrepeatable political and economic conditions. In the case of the new Hungarian broadcasting bill which is now before Parliament, broadcasters will have full responsibility for the programme services except in instances of national emergency and some restrictions on advertising. The national PSB stations will become 'public foundations'. They will governed by a body of experts delegated by parliamentary factions but numerically balanced between government and opposition. This will deal with economic matters. There will be a separate supervisory board on programming issues, based partly on the German ZDF model, which will have no right to intervene in daily matters. The President will be nominated by the Prime Minister but appointed by the President of the Republic (who constitutionally is appointed by the Opposition). The system has been designed to keep the government well away from direct control. The commercial sector will be regulated by a body similar to the former British IBA.

Professor George Wedell was also sceptical as to whether a dual system was emerging. He thought that a 'messy system' involving lots of different delivery systems cable, transmitters, satellites, VCR's etc. was much more likely. It was not certain what this would mean for programming but low budgets make for cheap imported programmes and thus the final situation might not mean much more real choice than there was at present. One of the problems faced by the new broadcasters was how to gain public legitimacy. In the new democracies, parliamentary legitimation might not be ideal, but it was better than no legitimation. There needed to be a regulatory framework which laid down standards for programmes. There was a need to work towards economic viability in order to meet standards as well as a need for professional competence in production, and for television which had a commitment to its audiences.

In the discussion the view was expressed that broadcasting legislation should be short and enabling. It was questioned as to whether there was any real problem with inviting in foreign capital. One of the crucial questions in any regulatory framework was who owned the transmitters? One possible perspective on the future could be that transnational media corporations would cover the whole continent by having 'national windows' for the Easter European countries and the republics of the former Soviet Union.

Session Five

Mr Lawrence Early explained the possible future relationship of the Council of Europe (CE) to the CSCE in the case of the media. He thought that the two organisations could be seen as complementary. For the CE, which was growing in membership all the time, the questions of human rights and pluralistic democracy are central, as they are for the CSCE process. The CE would continue to admit the newly emerging democracies provided they met the standards of democracy, respect for human rights and the rule of law which characterise the policies of all the existing members and which are laid down by statute. The CE has specific programmes designed to foster the mass media in Central East Europe, for example that labelled 'Demosthenes'. The CE has helped draft media legislation in many countries. It has launched an ambitious programme to train people to run the new media. Many of the more general programmes of the CE, for example on human rights education, equality between men and women, promotion of mutual understanding and defence of the rights of minorities, had implications for issues of media freedom, and which could possibly lend themselves to cooperative projects with the CSCE.

Dr Yuri Baturin said that Russia was not a member of the CE. It needs help in preparing media legislation and needed to be aware of the fact that democratic laws can be used undemocratically. High officials still try to pressure the media. The CE should call for civilised standards throughout Europe.

Dr Bernard Blin argued that it was necessary to try to control a situation of fast development in the media without disturbing freedom of content. In dealing with such a situation international associations needed to do preparatory work but decisions must be taken by government, European institutions and, best of all, by professionals. Only when the latter could not solve problems should the government step in. The CE tries to set up a framework and makes recommendations. This was pursued on many questions, for example: the concentration of ownership; rights of public access to information; questions of copyright, ensuring that citizens get better TV. The CE offers a structure which allows for the expression of views and experience, as well as the elaboration of political coordination and contacts with professionals. It provides project groups, for example that on equality of opportunity which is designed ensure, through production, distribution and training policies, that small nations are not helpless in a new media situation. We need to make sure that there is one Europe, not two. TV should be of citizens and for citizens. It is time to act, not wait and see.

Mr Jukka Liedes explained the AV-Eureka project and outlined the possibility that it might set up an 'Audio-Visual Observatory'.

Ms Kirsi Jansa from the Forum for European Journalism Students outlined the aims of that organisation and made a plea that the CSCE would make sure that students were not prevented from participating in these important international exchanges because of problems of nationality or finance.

In the discussion there was some debate over whether European or international NGO's should be recognised by the CE for the purposes of giving advice. Professor Blin clarified his view that 'professionals' meant employers as well as working journalists. Possible functions of the CSCE Office for fundamental freedoms and democratic institutions were discussed. Professor Kleinwächter proposed that the Centre could serve, inter alia, as a clearing house to identify areas for discussion and action in the media field as well as an early warning system to avoid conflicts between 'information rich' and 'information poor' countries in the CSCE.

The relation of the CE and the EC was again discussed and it was argued that there was no real contradiction between the approaches of the two organisations.

In summary, it was stressed that the CE and the CSCE process were complimentary and there was considerable scope for collaboration between their respective organs in order to develop freedom of communication and the human rights of the citizens throughout Europe. In the context of the current situation, it might be valuable to launch a research programme on the role of the media in the prevention of crises.

(This Report was prepared by Dr Colin Sparks
and approved by participants on 26 April 1992)

Programme

Seminar of experts, organized by the University of Tampere in cooperation with the International Association for Mass Communication Research (IAMCR) and the Finnish Association for Mass Communication Research in Tampere and Helsinki,
April 24 - 27, 1992

Friday, 24 April

Arrival in Tampere, accommodation in Hotel Villa

19.00 Concert in Tampere Hall (Tampere Philharmonic Orchestra)

21.00 Dinner in Hotel Villa

Saturday, 25 April

University of Tampere, main building, meeting room 1

9.15 Opening by professor Tarmo Pukkila,
Rector of the University of Tampere

9.20 Background, objectives and arrangements by professors
Wolfgang Kleinwächter & Kaarle Nordenstreng

TOPIC I: THE HUMAN RIGHT TO COMMUNICATE IN A CIVIL SOCIETY

Chair: Kaarle Nordenstreng, University of Tampere (Finland)

9:30-11.15 From Object to Subject? The Role of Citizens

Prof. Cees Hamelink, University of Amsterdam;
President of the IAMCR (The Netherlands)

Ms. Halliki Harro, University of Tartu (Estonia)

11.15-11.45 Coffee break

11.45-13.30 New Freedoms - Old Problems? The Role of Journalists

Mr. Cristian Constantinescu, Romanian Television
(Romania)

Dr. Colin Sparks, Polytechnic of Central London (UK)

13.30-14.30 Lunch

TOPIC II: INSTITUTIONAL FRAMEWORKS FOR PRESS AND BROADCASTING IN A NEW EUROPE

Chair: Wolfgang Kleinwächter, University of Tampere/Leipzig (Germany)

14.30-16.15 From Government Regulation to Market Regulation?
The Press in a New Environment

Prof. Yassen Zassoursky, University of Moscow, (Russia)

Prof. Dirk Voorhoof, University of Ghent (Belgium)

16.15- 16.45 Coffee break

16.45- 18.30 Public and Private Broadcasting:
A Dual System from the Atlantic to the Urals?

Dr. Zoltan Jakab, Hungarian Radio & Television (Hungary)

Prof. George Wedell, The European Institute for the Media (UK)

19.00-20.00 Reception at the City Hall of Tampere
Host: Mr. Jari Seppälä, Head of Information, City of Tampere

Sunday, 26 April

TOPIC III: ROLE OF MULTILATERAL EUROPEAN INSTITUTIONS IN THE PROMOTION OF COOPERATION IN THE FIELD OF INFORMATION

Chair: Jukka Liedes, Special Government Adviser at the Ministry of Education and Culture; Chairman of the CDMM of the Council of Europe (Finland)

9.30 - 10.45 Information Questions in the Council of Europe and Other Bodies;
Alternative or Complementary Institutions?

Mr. Lawrence Early, Media Section, Directorate of Human Rights (Council of Europe)

Dr. Yuri Baturin, Gorbatchev Foundation (Russia)

Prof. Bernard Blin, University of Paris (France)

10.45-11.15 Coffee break

11.15-13.00	General discussion
13.00-14.00	Lunch
14.00-16.00	Working groups
16.00-16.30	Coffee break
16.30-17.30	Closing session
18.00-23.00	Sauna and buffet in suburb Hangaslahti Host: Mr. Timo Tuovinen, Head of Acquisitions, YLE/TV-2

Monday 27, April

7.45	Departure by bus to Helsinki
10.30-13.00	Discussion with the delegates of the CSCE Helsinki Follow-up Meeting. (Hotel Grand Marina, Meeting room K-12)
13.00-14.00	Lunch in Hotel Grand Marina Host: Mr. Jukka Liedes, Ministry of Education and Culture

List of Participants:

Participants from outside Finland

Professor Cees J. Hamelink	University of Amsterdam, President of the International Association for Mass Communication Research (IAMCR) (The Netherlands)
Ms. Halliki Harro	Lecturer of Journalism, University of Tartu (Estonia)
Mr. Cristian Constantinescu	Deputy Editor-in-Chief, Romanian Television
Dr. Colin Sparks	The Polytechnic of Central London (UK)

Professor Yassen Zassoursky	University of Moscow (Russia)
Professor Dirk Voorhoof	University of Ghent and University of Antwerp (Belgium)
Dr. Zoltan Jakab	Hungarian Radio & Television
Professor George Wedell	The European Institute for the Media (UK)
Dr. Yuri Baturin	Gorbatchev Foundation (Russia)
Dr. Bernard Blin	Institute for International Relations, Paris (France)
Mr. Enn Kopli	Legal Adviser, Estonian Television
Mr. Alexander Surikov	Head of the ITAR-TASS Helsinki Office (Russia)
Professor John van Zyl	Head of Television Studies, Witwatersrand University (South Africa/The Netherlands)

Invited Expert

Mr. T. Lawrence Early	Head of Media Section, Directorate of Human Rights, Council of Europe

Finnish Participants

Ministry of Education and Culture

Mr. Jukka Liedes	Special Government Adviser
Mr. Kimmo Aulake	Project Manager, AV EUREKA Center
Ms. Marja Heinonen	Project Manager, National Comission for Audiovisual EUREKA

Ministry of Communications

Ms. Liisa Holamo	Counselor

Union of Journalists in Finland

Mr. Antero Laine	President
Finnish Broadcasting Company YLE	
Mr. Martti Soramäki	Head of Media Development Group
University of Tampere, Department of Journalism and Mass Communication	
Dr. Kaarle Nordenstreng	Professor and Chairperson
Dr. Wolfgang Kleinwächter	President of the IAMCR Law Section (Visiting Professor from Germany)
Mr. Jyrki Jyrkiäinen	Acting Associate Professor
Dr. Tarsto Hujanen	Acting Associate Professor
Ms. Kaarina Melakoski	Senior Lecturer
Mr. Hannu Nieminen	Research Fellow
Dr. Robert Angelusz	Professor of the Eötvös Lorand University of Arts Sciences (Visiting Scholar from Hungary)
Mr. Francis P. Kasoma	Associate Professor of the University of Zambia (Visiting Scholar)
Mr. Mutale Kasoma	Student
Mr. Nathan Markin	Student
Mr. Evaristo Mwatse	Student
Mr. Jukka Pietiläinen	Student
Mr. Ari Viuhko	Student
Forum for European Journalism Students (FEJS)	
Ms. Kirsi Jansa, Student	University of Tampere

Additional Resource Persons on Monday in Helsinki

Dr. Heinrich Wilhelm Beuth	CSCE Delegation of Germany
Ms. Päivi Blinnikka	CSCE Delegation of Finland
Mr. Jan-Anders Ekström	Chairman of Foreign Affairs Committee, Union of Journalists in Finland
Ms. Eeva Kemppi-Repo	CSCE Secretary, Evangelic-Lutheran Church of Finland
Dr. Marju Lauristin	Deputy Speaker, Parliament of Estonia
Mr. Vladimir Morozov	CSCE Delegation of Russian Federation

Seminar Secretariat

Mr. Ari Hakahuhta	Graduate Student, University of Tampere
Mr. Matti Heikkilä	Graduate Student, University of Tampere
Mr. Petteri Numminen	Graduate Student, University of Tampere

Annex IV

SUMMARY REPORT OF ROUND TABLE ON MEDIA LAW IN EUROPE

Tampere (Finland), 7 April 1989

A one-day round table among experts on media law in Europe was organized in connection with the meeting of European Journalism Educators at the University of Tampere (see separate report). The Round Table was convened by the Department of Journalism and Mass Communication of the host university, together with the Law Section and the Professional Education Section of the International Association for Mass Communication Research (IAMCR/AIERI) in cooperation with the International Journalism Institute (IJI), and with financial assistance of the Finnish Ministry of Education.

The Round Table was attended by 16 experts from 12 countries - seven from the West and five from the East. The meeting was opened and chaired by Professor Kaarle Nordenstreng from the University of Tampere.

Session One: Factual statements on the CSCE, COE, EC

(a) Professor Wolfgang Kleinwächter (University of Leipzig, GDR) introduced the topic of "Information" within the CSCE process. Several points were involved: (i) what is "Europe"? (ii) the locus of information in the CSCE process and (iii) the reason for and role of the London Information Forum. The speaker asked if it was necessary to have a legal basis for transfrontier information flow in Europe and what would be the best way to foster a European identity, even allowing for some inevitable dissensus.

(b) Professor George Wedell (University of Manchester, UK) opened by considering the scope of "Europe". The forces demanding transnational solutions were twofold: technology and the deregulation doctrine. There followed a very detailed and informative analysis of the process within the EC, from the Hahn Resolution in 1982 to 13 April 1989, which will see the adoption of the Draft Directive by the Ministers of the Internal Market, and some comparisons with the process within the Council of Europe. The limits of legality were mentioned in the context of the European Film and TV Forum.

(c) Mr. Bernard Blin (Prime Minister's Office, France) spoke about the process of transnational regulation within the framework of the Council of Europe. There were three components: (i) the technical (ii) the quality and quantity of programmes and (iii) the legal. A notable feature of the COE Transfrontier Broadcasting Convention is the possibility that exists for the adhesion of the EC; also it is worth noting the phrase "European production", which can be interpreted to include states of Eastern Europe. A reservation to the Convention had been entered by one party in respect of tobacco advertising.

Session Two: Developments in national media law

(a) Professor Yassen Zassoursky (University of Moscow, USSR) described the developments in relation to the legal situation of the mass media in the USSR. Three new laws are proposed: (i) the Law of the Press (ii) the Law on Access to Information and (iii) the Law of Glasnost. These draft laws will be introduced through the new Supreme Soviet for public discussion some time after late June 1989. Three young lawyers even drafted and published their "alternative" Press Law, whose focus raised the question of the centrality of journalists as the major beneficiaries of the new structure. The speaker's personal view of the Law of the Press was to either have no law or to have as short a law as possible so that the journalists would have more possibilities, within the framework of the penal code, the criminal code and other legal instruments. In this sense he still welcomed the Law on the Access to Information and the Law of Glasnost.

(b) Mr. David Goldberg (University of Glasgow, UK) suggested that there were contrary flows and tendencies within the UK, leading to the situation whereby, simultaneously, the IFJ published a Report critical of the alleged diminution of press freedom in the UK and the Government was suggesting a non-governmental review of law affecting the media and journalists. The significance the lack of constitution was pointed out, and offered as a possible model for international communication and information regulation.

(c) Professor Jörg Becker (Technical University of Darmstadt, FRG) made the point that in the FRG most significant decisions about telecommunications take place on the basis of decrees by the Board of Directors of the PTT, not Parliamentary laws. A crucial aspect of regulation within the FRG of communications systems was its constitutional position - being reserved to the Länder. The tendencies within these Länder were those of privatisation, decentralisation and localisation. Mention was made of several crucial High Court of Karlsruhe decisions: prescribing the juridical difference between public and private broadcasters, and upholding the "informational

self-determination of the individual". There was a serious problem with the premise that the Federal Government is competent to negotiate in relation to the Draft Directive on broadcasting within the EC, and an objection was being lodged in the High Court by the Land of Bayern.

(d) Mr. Blin reported on the recent (January 1989) amendment to the Law of Media in France. Five key ideas received legal recognition: (i) independence of the media from the government (ii) duality between public and private sectors (iii) pluralism (iv) participation and (v) the protection and promotion of cultural goals.

(e) Professor Walery Pisarek (Jagiellonian University, Poland) described Poland's press law as in transition like in Hungary and USSR. Examples were the changes from a system of licensing to simple registration of the print media, possibilities of private ownership of newspapers and periodicals, absence of barriers to satellite receiving dishes and the debates over the extent and scope of censorship. In general, however, the traditional approach of the laws to mass information as a tool to achieve some social aims dominates.

Session Three: Regulatory issues posed by international developments

(a) Professor Cees Hamelink (University of Amsterdam, The Netherlands) presented an overview which was composed of five interlinked elements: (i) international communication (ii) international cooperation (iii) the transnationalisation of national communication systems (iv) regional regulation and (v) universal regulation. An important issue was the extent to which Article 10 of the European Convention on Human Rights might be used to prevent the application of anti-trust law in favour of freedom of communication, and also it should be considered in the context of commercial speech. Wide disparities between different states were revealed as a result of a study undertaken, which showed how much effort would be required to achieve a level of workable cooperation.

(b) Professor Kleinwächter pointed out that there were several themes emerging in the area where cooperation was possible: cultural cooperation, the standardisation of technical criteria, co-productions, the need for effective working bodies on a permanent basis, the settlement of disputes, and the possibility of a move towards an international communications convention, made feasible by the convergence of mass media, data protection and tele-communications norms; at the very least there was a need to improve the level of coordination between international organizations in particular within the UN system. Besides, communications issues should emerge into global negotiations.

This session concluded with a wide-ranging discussion. Hamelink identified three general problems: (i) that the presuppositions underlying communication regulation are taken for granted (ii) that all too often, regulatory solutions addressed and adopted marginal solutions and (iii) that law's social function of protecting interests did not take account often that not all interests are or could be articulated. Nordenstreng, referring to his study on the League of Nations and the media, made the point that there was a necessity to keep in mind the historical perspective. Becker, echoed by Goldberg, queried the model of global communications and its regulation by law, contrasting ISDN with LANs.

The meeting closed with a warm vote of thanks by all participants to Kaarle Nordenstreng and the University of Tampere for putting on such a stimulating meeting in such a congenial atmosphere.

(Report prepared by David Goldberg)

ROUND TABLE ON MEDIA LAW

List of participants:

AUSTRIA	Professor Hans Heinz Fabris University of Salzburg
BULGARIA	Professor Kolio Kolev Sofia University
CZECHOSLOVAKIA	Director Vaclav Slavik International Journalism Institute Prague
FINLAND	Professor Kaarle Nordenstreng University of Tampere
	Lecturer Kaarina Melakoski University of Tampere
	Instructor Jorma Mäntylä University of Tampere

FRANCE	Dr. Bernard Blin Prime Minister's Office Paris
FRG	Professor Jörg Becker Technical University of Darmstadt
GDR	Professor Wolfgang Kleinwächter Karl-Marx-University Leipzig
	Dr. Heidemarie Geidel Karl-Marx-University Leipzig
NETHERLANDS	Professor Cees Hamelink University of Amsterdam
POLAND	Professor Walery Pisarek Jagiellonian University Cracow
SPAIN	Professor Antoni Noguero Universidad Autonoma de Barcelona
UNITED KINGDOM	Professor David Goldberg University of Glasgow
	Professor George Wedell The European Media Institute University of Manchester
USSR	Professor Yassen Zassoursky University of Moscow
	Lecturer Halliki Harro Tartu University
	Lecturer Tiit Matsulevich Tartu University

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